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Official Report of Debates (Hansard)

Friday 19 January 1996

Journal des débats (Hansard)

Vendredi 19 janvier 1996

**Standing committee on
general government**

Savings and Restructuring Act, 1995

Health issues

**Comité permanent des
affaires gouvernementales**

Loi de 1995 sur les économies
et la restructuration

Questions concernant la santé

Chair: Jack Carroll
Clerk: Tonia Grannum

Président : Jack Carroll
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENT

Friday 19 January 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Vendredi 19 janvier 1996

The committee met at 0900 in the Hamilton Convention Centre, Hamilton.

SAVINGS AND RESTRUCTURING ACT, 1995
LOI DE 1995 SUR LES ÉCONOMIES
ET LA RESTRUCTURATION

Consideration of Bill 26, An Act to achieve Fiscal Savings and to promote Economic Prosperity through Public Sector Restructuring, Streamlining and Efficiency and to implement other aspects of the Government's Economic Agenda / Projet de loi 26, Loi visant à réaliser des économies budgétaires et à favoriser la prospérité économique par la restructuration, la rationalisation et l'efficacité du secteur public et visant à mettre en oeuvre d'autres aspects du programme économique du gouvernement.

The Chair (Mr Jack Carroll): Good morning, everyone. Welcome to the standing committee on general government's hearings on Bill 26. We're in Hamilton this morning, I think. We've been to so many different places we have to look at the road sign when we get up in the morning to know where we are. We are in Hamilton and we're delighted to be here. This is our last stop on our cross-province tour. We are here to listen to the concerns of the people of Hamilton and we're happy to be here.

Before we get on to our first presenter, there are a couple of housekeeping things to be attended to, so the first person I'll call on is Mr Clement.

Mr Tony Clement (Brampton South): For the benefit of the record and for the public present, I would like to declare for the record that the government side has tabled further amendments that we wish to propose on Monday to schedules F, G, H and I of Bill 26 for the benefit of the committee.

The Chair: Ms Lankin, you had a motion.

Ms Frances Lankin (Beaches-Woodbine): Yes. I've tabled two motions with the clerk. The first motion reads as follows:

Whereas there has been overwhelming public interest in Bill 26 and 84 groups and individuals have requested to appear before the standing committee on general government in Hamilton which far exceed the 15 spaces available today for hearings;

I move that this committee recommends to the government House leader that, when the House returns on January 29, 1996, the order with respect to Bill 26 be amended and that the bill be returned to the standing committee on general government so that further public hearings can be arranged for the community of Hamilton;

Further, this committee recommends that the three House leaders meet as soon as possible to discuss this issue.

The Chair: In other areas where we've been we've limited the discussion on this to a minute per party in order to accommodate our guests who are here to make presentations. Do we have the same agreement this morning? Okay.

Ms Lankin: This is the last day of public hearings on this bill and, as you can see, here in Hamilton we have over 80 groups that have applied for 15 spaces. The public interest is overwhelming, and it has been in every community we have visited. In the last two weeks, while the two committees have been travelling the province, there have been over 1,000 individuals and groups that have applied to be heard before this committee and there have been less than 300 spaces—about 275, roughly speaking. Hundreds and hundreds of voices are not being heard. Hundreds and hundreds of opinions are not being registered upon the mind of this committee as it goes into debating, in the final stages, the amendments to this bill and passage or defeat of the bill overall.

I must say that every day we have heard new implications of issues in the bill that we hadn't understood or didn't realize what the implications would be for a particular region or for a particular group of people. I think it is a shame that the people have been denied the opportunity to have full input.

The government will say that a broad range of people have come forward, and that's true and that's good. The government will say that it has listened and it is making amendments, and thank God, because if we'd gone through before Christmas there would be no amendments to this bill. But I still believe that this bill is fundamentally flawed and that there are areas of this bill that require extensive consultation and extensive rewriting.

I'll just close by saying we have offered on January 29 to pass those parts of the bill that the government feels it needs for its fiscal agenda. Let me say to Mr Clement, before he says his mantra out here about all the money they're going to save on January 30, the day after the bill's passed, many sections of this bill dealing with fundamental reform of how health services are delivered in this province are not going to save you money on January 30. Many of them change forever the face of medicare as it is delivered in this province.

It deserves to have appropriate public debate and you are denying that by the process that you insist on. In light of all of the presentations you've heard asking for this bill to be split up, to be slowed down and to be dealt with appropriately, I urge you today to support this motion.

Mr Clement: I cannot support the motion. I believe, quite frankly, that we have had a very good process that has allowed the public an opportunity to express a

diversity of views over the past three weeks of hearings. By the end of today, both sides of the committee will have heard at least 750 presenters, representing a multiplicity of views. Certainly it's no exaggeration to say that not all of them were terribly pleased with the government's position, and that's what an open process is all about.

I repeat that this piece of legislation will have had more committee time, more public time for an opportunity to discuss its merits and demerits than any bill in the previous two Parliaments and that the quality of discussion that we have heard over the last three weeks has been of a very high nature. People have been able to give us some excellent recommendations, many of which are encompassed in the government's amendments which we have tabled today.

To Ms Lankin's last point, let me just say this: There is not only a fiscal cost in not proceeding with alacrity, there is a cost in terms of our ability to manage the health care system, to manage a better health care system. Every day that we wait, every month that we wait means that we have one month less to make the investments into palliative care, long-term care, HIV sufferers, cancer sufferers, whatever, to reinvest those savings that this bill will allow us to do in the health care system, and I, for one, do not want to wait another day.

Mr Dominic Agostino (Hamilton East): I speak in support of the motion today. We have, from day one, made the same request. The overwhelming response should give the government some clear indication and some reason for concern as to what they're doing and the speed at which they're proceeding with this bill.

What we see here today is an example of what has happened across Ontario. There are shadow hearings occurring in Hamilton, and I urge other people that are here, members of the committee, particularly government members, to take the opportunity to walk down one floor to the Albion Room and listen to many of the groups that you have shut out and not allowed to be here today. They have taken it on their own to be there.

This bill is the most massive power grab by any government in the history of this province. If you're going to proceed in such a manner, in a manner that I believe is going to destroy the health care system across Ontario, the damage you're going to inflict on health care across Ontario cannot be and may not be undone by any future government because of the magnitude.

You ran an election on open government; you ran an election on listening to people. That was Mike's big thing: "We're going to listen to the average person. We're going to listen to people across this province." Well, what do you say to the thousands and thousands and thousands of individuals across Ontario you have denied access to? This is not a democratic process. The way this government is handling this bill and the way this government is handling this public process is the exact same brutal way and the same undemocratic way that they have tried to ram this bill through the Legislature.

I believe very much that a fair opportunity would be to pass the key elements that you want, that are necessary for your budget, but allow the people of Ontario that opportunity. Maybe the reason is that you're afraid to

listen even more to what people have to say because you have taken a beating, frankly, in the last two weeks from people across the province, and if you allowed more hearings, this beating would continue.

The Chair: We'll now have the vote on the motion.

Ms Lankin: Mr Chair.

The Chair: Oh, I'm sorry, Ms Lankin.

Ms Lankin: Thank you. Just a very quick wrapup. Let me say to Mr Clement that the ability for the government to work with communities in the reform of health care is already in place, has been in place for years and has been starting to take place community by community, led by community folks, community interests, bringing forward their points of view on restructuring and facilitated by the ministry, not a power grab where the minister comes in and dictates to communities.

Let me also say to you that the fundamental rewriting of the rules of health care that is contained within this bill will inevitably lead us to an Americanized system, a two-tier health care system, the undermining of the Canada Health Act and medicare as we know it. I, for one, go on record as saying that that will be on the heads of the Conservative Party, on the head of Mike Harris, on the heads of those of you who would disallow appropriate community debate to bring about community consensus on the direction of reform.

I think it is a shame. I think the way in which you've proceeded is arrogant. I think it denies public input. I think it is simply anti-democratic, and I will have no part of it. I believe that your government will suffer in the long run and so will the people of Ontario and our health care system, and that's the biggest shame of all.

The Chair: Thank you, Ms Lankin.

Ms Lankin: Recorded vote.

The Chair: Ms Lankin has asked for a recorded vote. Just for you folks in the audience, there are only five people at the table who have the right to vote. They will be the five that vote.

Ayes

Caplan, Lankin.

Nays

Clement, Ecker, Johns.

The Chair: The motion is defeated.

Mr Agostino: On a point of order, Mr Chair: We have a number of people standing at the back. Can we accommodate them?

The Chair: Mr Agostino, we've already asked for the wall to be taken down, and there will be a little noise associated with that. Okay. Mrs Caplan.

Ms Lankin: I have a second motion.

The Chair: Oh, I'm sorry, Ms Lankin.

Ms Lankin: It's been a long week, Mr Chair. You're forgiven.

The Chair: It has been a long week.

Ms Lankin: I just want to indicate that I tabled a second motion. That second motion dealt with a theme that I have been following every day, which is a demand for the government to table its amendments. While I am sorely disappointed that the Minister of Health did not

live up to his commitment to me to table the amendments in a timely fashion—he promised he wouldn't wait until the last minute, and here we are at the last day; we start clause-by-clause on Monday—I appreciate the fact that I do finally have them, so I will withdraw that motion.

0910

Mrs Elinor Caplan (Oriole): We've had this motion every single day. If this one is defeated, and I suspect that it will be, we have a specific motion for Hamilton that I'd like to deal with after this one. We've been tremendously frustrated because of the numbers of people that have been turned away. Given the implications of Bill 26 and the implications that people are just beginning to understand, and we're just beginning to understand when these hearings began and we realized how many groups wanted to come forward, we have been trying to make sure they would have the opportunity to be heard.

All we have requested, day after day, is that the government members of this committee vote to alert the House leaders. Yesterday in Niagara—

The Chair: Is this the motion you're introducing?

Mrs Caplan: I'm going to introduce the motion.

The Chair: Could you introduce the motion first and then we'll go on to the discussion.

Mrs Caplan: Yes.

Whereas Bill 26 impacts in a major way on every individual in Ontario; and

Whereas Bill 26 requires broad public input before being passed into law; and

Whereas there are 84 groups in Hamilton that want to provide input into the bill but only 15 will be heard;

I move that when the House returns on January 29, 1996, the order with respect to Bill 26 be amended such that the portions of the bill that do not require urgent passage for fiscal reasons be returned to the standing committee on general government so that further hearings can be arranged for the community of Hamilton.

The Chair: Can we limit our discussion on this one, since it's substantially the same as the first one, to a minute so we can allow our presenters to come to the fore, please.

Mrs Caplan: The reason we tabled this motion today—as you know, Mr Chairman, I tabled a motion on the very first day of the hearings because of the concern—is that in each centre of the province we have been attempting to alert the government and requesting. Since the members today, I expect, are going to defeat a motion that simply says “recommend”—or I think the first motion just says “request”—I think there should be a motion on the floor that actually directs. I think they're going to defeat it and I'm very concerned that, with that defeat, they send out such a negative message to the people of this province, not only those who have been heard but those who have not been heard.

I'm imploring the members of the government caucus who have the opportunity to send that message that you now have a chance to choose. You can choose a very reasonable, “Let's just alert them, ask them to consider before the 29th, give a little additional time,” or you can take a more extreme motion that actually tells them to amend.

I think those are the only two choices, because if you proceed with this bill without doing one of the two things

that have been proposed today, either alerting the House leaders or actually suggesting to them that they amend that closure bill, then you are risking the wrath of the people of this province, and they will not stand for this railroading of democracy.

Mr David Christopherson (Hamilton Centre): I appreciate the opportunity to be with the committee here today. This is my first chance to be with the health portion committee. I've been with the other group through a number of communities, and I can tell you exactly the same thing is happening on the other side of Bill 26.

Every community I've been in—I was in Thunder Bay two days ago, Ottawa yesterday—it's the same. In fact, I would say to the government members, it's not only people who are opposed to Bill 26 who want more time. A good portion of the people who are supporting what you're doing acknowledge in their briefs that there was not enough time to adequately deal with this bill.

If you want to have any moral authority—you'll have the legal authority—to implement the powers you're giving yourself in Bill 26, then you'd bloody well better give the people of Ontario an opportunity to be heard at least once before you seize all these powers and run with them for the next four years.

You've got one opportunity now, one opportunity left, to give the people of Ontario their say. This is a reasonable motion put forward by the Liberals, and my voting colleague, Ms Lankin, will be supporting this. We urge you, please, at the 11th hour, listen to what the people of Ontario are saying to you and give them their say, give them at least a voice in this process.

Mr Clement: As I said earlier, this bill requires urgent passage not only for fiscal reasons but for health care reasons. We have heard many deputations over the past three weeks of hearings—not all deputations but many deputations—say: “We need the government to act. There is a health care crisis in this province.” These are significant players who said this, hospital boards and chambers of commerce and other agents in our community, who said, “We need the government to act.” It's not only a question of the fiscal exigencies; it's also a question of ensuring that our health care has the proper resources to do its job for the people of Ontario. It's for health care reasons that we have to pass Bill 26 on January 29.

Mrs Caplan: That's not what they said. Even the chamber of commerce said, “Slow down.” Even the big insurance companies said, “Delay.” Even the people who came supporting this bill said, “We have very serious considerations and we're asking you to slow down and we're saying take more time.” They're as worried as everyone here. They are as worried as everyone who has said to you that trying to pass this bill before Christmas was an abuse of democracy and an abuse of process. What they're saying to you now is that you're going to produce bad law if you continue on this railroad to ram this through. Everyone is telling you to take a little more time. Even those who came in support of the bill said, “If you take a little more time you'll get better law.”

I've very briefly looked at the amendments you put forward today, and even the amendments to the privacy have not addressed people's concerns. These privacy

concerns are not scoped to fraud. People will not have an opportunity to have anything to say about that, because today is the last day of public hearings. I can tell you, if they don't have a chance to have their say, you are not going to have the moral authority and the consent of the public necessary to move forward in the name of restructuring. You haven't told them what restructuring will mean and you haven't given the protection for Canadian medicare and you haven't given the protections for health care, and that's the betrayal of a trust.

The Chair: All those in favour of the motion? Those opposed? The motion is defeated.

Just for the sake of the audience, politicians sometimes have a little trouble deciding what a minute is. The minutes you just saw are not the kind of minutes we normally have here, so anybody coming forward with a presentation, don't multiply these minutes by 30.

CATHOLIC HEALTH ASSOCIATION OF ONTARIO

SALVATION ARMY AND JEWISH HOSPITALS

The Chair: Our first presenters this morning are the Most Reverend Anthony Tonnos, chair of the Catholic Health Association of Ontario; Mr Ron Marr, president of the Catholic Health Association of Ontario; Lieutenant-Colonel Irene Stickland, president and CEO of the Salvation Army Grace Hospital, Scarborough; and Mr Joseph Mapa, executive vice-president of Mount Sinai Hospital in Toronto. Good morning and welcome to our committee.

Interjection.

The Chair: Did I not say Bishop Tonnos? I'm sorry, Bishop. You have a half-hour to use as you see fit. Questions, should you allow the opportunity for them, would begin with the government. The floor is yours.

Mr Ron Marr: Thank you, Mr Chairman, for the opportunity of the Catholic Health Association, the Salvation Army and Jewish hospitals to appear before your committee for these public hearings on this most important piece of legislation. In our opinion, Bill 26, the Savings and Restructuring Act, is perhaps one of the most important pieces of legislation to be introduced into the Ontario Legislature in recent memory. It is only fitting that the public and stakeholders be given the opportunity to comment on this bill. We trust that this committee and the government will make significant amendments to the bill which will move restructuring forward in the spirit of collaboration and with the public interest in mind.

0920

I'd like to introduce the members of our delegation to you. My name is Ron Marr and I am the president of the Catholic Health Association of Ontario. Bishop Anthony Tonnos is the bishop of the diocese of Hamilton and is here today in his capacity as chair of the Catholic Health Association of Ontario. Joining us today in presenting this brief are representatives of the Salvation Army and Jewish hospitals in Ontario. Lieutenant-Colonel Irene Stickland is the president and CEO of the Salvation Army Grace Hospital in Scarborough, and Mr Joseph Mapa is the executive vice-president and chief operating officer of Mount Sinai Hospital in Toronto.

Bishop Tonnos, Lieutenant-Colonel Stickland and Mr Mapa will each give you a brief overview of denominational health care in Ontario, and I will, at the end of their presentations, summarize our concerns about Bill 26 for you. I'd like to call on Bishop Tonnos to begin our presentations.

Bishop Anthony Tonnos: The Catholic Health Association of Ontario is a partnership of Catholic hospitals, homes for the aged and community-based services located in large urban areas and smaller communities across the province. The association also has as its members the Ontario Conference of Catholic Bishops and the 10 sponsors—religious congregations and lay groups—of the Catholic health institutions.

The Catholic health ministry is a major participant in Ontario's health care system and has been so for 150 years. Catholic hospitals across Ontario were initially staffed with religious sisters, a few lay nurses and student nurses. A great deal has changed since then. In 1960, with the advent of universal health insurance, the government began a partnership with the religious communities of sisters. Ontario's health care system was designed to provide health care services to the public and was not intended to compromise the rights of religious congregations and the church to witness Catholic values in health care. The partnership between government and denominational providers has meant that the Catholic health ministry has become an important contributor to Ontario's health care system. Over 30,000 people are employed in the Catholic health ministry in Ontario, and the hospital sector alone accounts for \$1.3 billion of the \$7.5 billion to \$8 billion spent on hospital care in Ontario.

However, the Catholic health ministry is not really about numbers of employees or billions of dollars. It is about health care that is rooted in the ministry of healing that is a fundamental aspect of the Catholic Church and began with its founder, the Lord Jesus Christ. It is a ministry for all persons, regardless of creed, which focuses on respect for life and the wholeness of the person.

The Salvation Army and Jewish health services in Ontario share in a special way many of the characteristics of the Catholic health ministry and are present with us today to demonstrate the solidarity of the denominational health sector in reference to our shared concerns with Bill 26.

The governance structures of Catholic and other denominational hospitals allow us to achieve the goals of our respective ministries while working with local communities and government to plan and deliver needed health services. Through representative and voluntary local boards of directors, Catholic and other denominational health institutions and community-based services are good stewards of scarce financial resources. We are anxious to find ways to eliminate unnecessary duplication and to bring about progress and change to Ontario's health care system.

Lieutenant-Colonel Irene Stickland: The Salvation Army is a branch of the Christian church and is actively involved in health care and social services as a significant component of its Christian mission and ministry.

For over 114 years, the Salvation Army has served in areas of addiction rehabilitation, corrections and justice services, children and family services, and health care. You will know that the motivation behind the Salvation Army's involvement in these services is Christian compassion that reaches out to meet human need.

The Salvation Army has operated facilities in Canada since 1905, and in each of these hospitals, the mission of caring encompasses the physical, emotional and spiritual wellbeing of patients and their families. We endeavour to minister to the whole person, giving individualized care appropriate to personal needs. In fulfilling the mission, the Salvation Army is committed to a standard of professional and technical excellence, seeking to complement modern medicine with a spiritual dimension which will provide holistic care and enhance the healing process. I think it's fair to say and demonstrated that the Salvation Army hospitals, along with denominational hospitals, have been very focused also on utilizing resources effectively and have done that in history till this date.

In Ontario, the Salvation Army operates three hospitals, four long-term-care facilities, as well as community-based mental health programs. The hospitals are listed in your written document. I won't review those but will just say that the quality and efficiency of these hospitals is recognized in the community and within the health care system and has been validated by the designation of the Salvation Army Scarborough Grace Hospital with a four-year accreditation status by the Canadian Council on Health Facilities Accreditation. I believe it is noteworthy to say that at least two of the Jewish hospitals have also been designated. So denominational health care is up there, achieving the quality and demonstrating this to our communities. It's well known in the communities that these services are provided in that fashion.

With respect to the Scarborough Grace Hospital and the other Salvation Army hospitals, and I believe our colleagues as well in the other two systems, while retaining our own governance and administration each of these hospitals is actively involved in planning programs and services with other hospitals and agencies in their region in order to best utilize the available resources and to improve the coordination of patient care. In Windsor, for instance, the Salvation Army is a partner in the governance and management of the Hôtel-Dieu Grace Hospital, a merger of the Religious Hospitaliers of St Joseph Hôtel-Dieu Hospital and the Salvation Army hospital. This merger of the two facilities demonstrates the commitment of both denominations to the health care ministry of the church in going beyond the individual institutions in providing quality care and sharing common values.

The Salvation Army has endeavoured to respond always to changing needs. Health care reform is essential as our society grapples with the economic realities of this age. The Salvation Army, along with our colleagues in the Catholic Health Association of Ontario and the Jewish health care services, is committed to working with local communities and agencies and with the government in finding ways to meet community need. Together, we believe we can find solutions, and we appreciate the opportunity to be part of this process. We look forward

to having a meaningful role as health services unfold in these difficult days.

Mr Joseph Mapa: My name is Joseph Mapa and I'm chief operating officer of Mount Sinai Hospital in Toronto. We're also pleased to be part of these vital and critical public hearings, because it's our view that the success of our hospitals in Ontario has always been based and must continue to be based on the volunteer governance system. Today's hearing is a very significant forum, because it reflects the give-and-take consultative process which must remain the framework in which Bill 26 comes into existence.

The key message we would like to convey this morning is that every caution should be taken to avoid any deterioration or dismantling of our voluntary, community-based governance system. Put another way, we would advocate that we do everything we can to promote and support our governance system. It is our belief that the strengths and achievements of our current system emanate from the efforts, values and aspirations of our communities throughout the province, including the vital denominational communities.

The genesis of the Jewish community's support for health care is rooted in the traditional Jewish values of *Tsdakah*: giving, sharing and caring for the sick. When the institution of hospitals became an integral part of the community service, Jewish communities throughout North America began to direct their efforts towards the building and the development of services caring for the sick.

Even though the Jewish community-supported hospitals have provided and continue to provide for the distinctive religious and cultural needs of the Jewish community, such as observance of dietary laws or religious services, the fundamental tenet of these institutions is to serve the total community with the highest quality of compassionate care. This reflects the traditional Jewish social values of contributing to the welfare of the total community.

Mount Sinai Hospital and Baycrest Centre for Geriatric Care exemplify the history, tradition and implementation of these values, as well as the success of the cultural pluralism which continues to be one of our province's major attributes. Our province is indeed fortunate and visionary to be able to tap into this wonderful pool of human resource and denominational support. There are many reasons for this and they relate to community tradition, sensitivity, diversity of need, advice and fund-raising from which so many Ontarians benefit.

0930

I cannot speak on behalf of each and every denominational hospital, but I can speak for Mount Sinai Hospital which I believe is a good example of so many other institutions in Ontario which are rooted in, and have benefited from, unique community traditions and values.

Mount Sinai Hospital, as most of you are aware, was conceived and developed within the Jewish community in service to the general community. As a downtown hospital situated in a multicultural setting and as a hospital which has its roots in the Jewish community, we have extensive links with community-based service organizations and various ethnic organizations such as the Chinese-Canadian constituency. Not unlike other urban hospitals, we have profound appreciation for the multi-

cultural needs of our patients. To this end, for example, we have instituted a variety of programs including our multilanguage interpreter service with access to over 48 languages by 270 interpreters. Of particular note is our special outreach program to our adjacent Chinese community. This relationship manifests itself in a variety of programs as well as representation on our board and key committees.

Our bond with the Jewish community, of course, is very special, as indeed is the bond that Baycrest Centre for Geriatric Care has with the Jewish community. Mount Sinai Hospital provides a number of services to this community including kosher food, Sabbath elevators, and synagogue and rabbinical services. Our Jewish community support has been outstanding, reflecting traditional Jewish values towards the health and welfare of the community at large. The fund-raising support provided by the Jewish community for our research institute is an excellent example of how the support of such a committed community is indispensable and contributes to everyone's benefit. Mount Sinai Hospital's research institute has gained an international reputation in a short time and brings credit to the entire health care system in Ontario. It is not funded in any way by the ministry and is dependent for its capital and operating requirements on the efforts of our volunteers who raise funds as well as provide leadership in governance.

The point I would like to make is that the success of our hospital in serving the community, as in the case of so many other communities and denominational hospitals in Ontario, is intertwined with the intimate involvement and dedication of our volunteer trustees. It is a personal, genuine concern and responsibility to our patients and the communities we serve. And this should be coveted. Our hospital's board plays a unique role in our institutions, especially in those associated with particular sectors of the community. Our board, as I have indicated, serves as a representative of the Jewish and other communities and in many ways reflects their needs and priorities.

I would like to conclude my remarks by reinforcing our support and committed participation in the vital change process currently under way to ensure the long-term prosperity of our health care system and its principles, and to re-emphasize that an integral part of that long-term prosperity must include a continued involvement of our dedicated communities and the trustees that represent them.

Mr Marr: This rather lengthy background to denominational health care was intentional, to give you an idea of some of the background and basis for our concerns and comments on Bill 26, which I'm going to share with you at this time.

I do want to talk to you for a few minutes about one other very vital piece of information before we go on. That pertains to the commitment of all three Ontario political parties to the Catholic and denominational health ministry in this province.

Last spring representatives of our association and the sisters, who are the sponsors of Catholic health care, met individually with the leaders of Ontario's three main political parties. Mr Rae, Mrs McLeod and Mr Harris each confirmed the commitment of their respective party

to the vital role of Catholic and denominational hospitals and to the maintenance of our governance structures. Since that time, in public statements and meetings with Mr Harris, Mr Wilson and the Deputy Minister of Health, we have stated clearly the intent of the partners in Catholic health care to remain active participants in all sectors of Ontario's health care system for the long-term future. Concurrently we have stated that we wish to be active participants in bringing about much-needed change and progress to our health care system. At the same time, however, we require respect for our traditional roles and governance structures.

As the new government began the task of bringing about such change and progress, our association offered advice on how to improve the system without compromising quality of care and the cultural and religious diversity of this province.

I'm going to skip the next section of the brief, which gives you some details on that advice. I realize we're running short on time, and I want to get directly to our comments on Bill 26, so I'll skip directly to page 13.

The Catholic Health Association, our members and the denominational health sector in general recognize that change must and will happen and that we are prepared to work with the government and local communities to see that real change takes place. We also recognize that legislative changes may also be required to provide the provincial government and the Ministry of Health with the tools necessary to facilitate change in the way hospital services are delivered in Ontario. We question, however, some of the unrestricted powers conferred upon the minister through Bill 26. Other groups, including the Ontario Hospital Association, have articulated many of the specifics of this bill which cause our members concern. We will focus today on those sections of the bill which we believe have direct impact on denominational hospitals.

We recognize that in some situations and in some communities the Minister of Health may need additional tools to facilitate the implementation of hospital restructuring studies. In principle, the creation of the Health Services Restructuring Commission may be such a vehicle needed to facilitate this change. There are, however, components of the proposed commission which prohibit us from fully endorsing this concept at this time. Specifically, we believe that clarification is needed concerning who will serve on the commission and how will the members be selected, and secondly, what will be the specific mandate in terms of reference of the commission. We were pleased to hear that the Minister of Health has agreed to limit the tenure of the commission to four years, and we support this initiative.

Bill 26 proposes that the powers of closure and amalgamations of hospitals and other matters related to a hospital may be delegated to the Health Services Restructuring Commission or to any other entity. We believe that this approach removes the accountability for such major initiatives from the elected representative, the Minister of Health, and places decision-making on such important matters in the hands of unelected and unaccountable persons.

The Chair: Mr Marr, excuse me just for a minute.

Sir, I'll have to tell you that we're not allowed to have any signs in the room, please. Could I ask you to remove the signs, please.

Interruption.

The Chair: Could I ask you to remove the signs, please.

Mr Agostino: On a point of order, Mr Chairman: Last week at the public hearings they were allowed to have the signs. They were not disruptive. They had them there at the back. They were allowed to. There was no problem, no disruption, and I don't see a problem, why you would ask these gentlemen now to do it. They were allowed to do it last week, and they did it in a very quiet way and a very peaceful way, as they are doing it today.

The Chair: We have had a consistent policy on this committee that we do not allow any signs. Would you please remove the signs.

Interruption.

The Chair: I'm going to call a short recess.

The committee recessed from 0938 to 0952.

The Chair: Okay, we're ready to resume please. I'll just explain a couple of things. The situation with the signs: The reason I stopped the meeting was because there was a disagreement going on at the back of the room about whether the signs should be up or down. They were going up and somebody else was taking them down. I was concerned about what was going on there, so I thought it prudent to stop the proceedings at that point. The members of the committee and the local MPPs have agreed that the signs that are there will be allowed to stay there. I don't have a problem with that. The second thing is that we were having trouble with our sound system, so we took the opportunity to fix that while we had a break. The third was the press asked to get moved up a little closer so they could hear.

Having taken care of all of those things, we now will try to get back to wherever you were. Mr Marr, you can pick it up, and I apologize for the interruption.

Mr Marr: It's quite okay, Mr Chairman.

We were talking about our concerns around Bill 26 in terms of the proposed restructuring commission and mentioned very briefly that the beginning concerns had to do with who was going to serve on the commission and the specific mandate and terms of reference.

Bill 26 proposes that the powers of closure and amalgamation of hospitals and other matters related to hospitals may be delegated to this health system restructuring commission or to some other entity. We believe that this approach removes the accountability for such major initiatives from the elected representative, the Minister of Health, and places decision-making on such important matters in the hands of unelected and unaccountable persons. We are also concerned about the likelihood of the creation of a large bureaucracy to support such a commission and the consequent increase in influence and control by the civil service in these important matters. Decisions like closing hospitals, forcing mergers or other collaborative ventures among hospitals, and the other proposed powers are so significant that it is imperative that the minister retain the ultimate decision-making authority and consequent

accountability. The work of the commission must be directly accountable, not only to the people and the communities of Ontario, but also to the provincial cabinet. Only the minister can be accountable in such a manner and only the minister has the full appreciation of the policy directions of the provincial cabinet.

Consequently, we make the following three recommendations in reference to the proposed Health Services Restructuring Commission:

(1) That the commission be an advisory body to the Minister of Health and that the minister retain the final authority to act on any recommendations of the commission.

(2) That the terms of reference for the commission clearly state that it is government policy for local communities to define the details of hospital restructuring and that the commission will only deal with restructuring studies and communities where local solutions to hospital restructuring have not been achieved within a specific time frame. Clearly, our opinion is that the job of the commission is to implement studies that have local consensus.

(3) That specific criteria be developed to guide the minister in making his decisions concerning which restructuring studies and communities he will ask the commission to address.

I'd like to focus at this point on proposed amendments to the existing Public Hospitals Act. Catholic and other denominational hospitals have historically provided quality care to all residents of the province of Ontario without regard to creed. Catholic and other denominational hospitals have thrived in an atmosphere of pluralism and tolerance which have been the hallmarks of this province for generations.

The corporate integrity of Catholic and other denominational hospitals actualize the missions of these hospitals. The missions of our hospitals, as we have said repeatedly this morning, focus on holistic and compassionate care which stresses the physical, emotional and spiritual components of healing.

Our association, our members and the members of other denominations have stated repeatedly that we support the principle of hospital and health system reform and that we will collaborate at both the provincial and local levels to ensure that change happens and that the goals of hospital restructuring are achieved.

We are, however, very concerned with section 6 of the proposed amendments to the Public Hospitals Act, which may impact on the corporate integrity of denominational hospitals. We are particularly concerned with the proposed amendments to the act which relate to the closing of hospitals, the amalgamation of hospitals, the determination of what services will be provided by a hospital, the appointment and the powers of the supervisor, the authority of the minister to unilaterally set or eliminate the budget of a hospital, and the proposed power to have the government write hospital bylaws.

We believe that the granting permanently of these sweeping powers to the Minister of Health goes far beyond the authority needed by the minister to ensure that hospital restructuring takes place. We recognize that the Minister of Health may need some extraordinary

powers to ensure that restructuring studies which have been duly undertaken, supported by local communities and approved by the minister are implemented. We believe these extraordinary powers should not be enshrined permanently in the legislation. We support the minister's amendments submitted to this committee on January 17 which "repeal the powers of the minister to close and amalgamate hospitals, to transfer hospital programs, and to issue other directions to hospitals at the end of four years."

There is an issue, however, which is more important to us than the time limitations of these powers. We believe that the granting of these powers to the Minister of Health or the proposed commission encroaches upon the corporate integrity of Catholic and other denominational hospitals and has the potential to force Catholic and other denominational hospitals to merge with hospitals that do not share their mission and values, provide services which are in contradiction to their missions or cease to provide services which are central to their missions.

In addition, these sweeping changes to the Public Hospitals Act are potentially contrary to the commitment of Premier Harris and the leaders of the Liberal and New Democratic parties, which I mentioned earlier. This commitment was to preserve the corporate structures of Catholic and other denominational hospitals. We consider the proposed powers for the minister or commission to force mergers between denominational and non-denominational hospitals as being contrary to this commitment.

The corporate integrity of the Catholic and other denominational hospitals, as I mentioned earlier, actualizes our mission. The forced merger or amalgamation of denominational and non-denominational hospitals will, in effect, nullify the mission of the denominational hospital. Consequently, we cannot support any provisions of Bill 26 which will give the government, the Minister of Health or a restructuring commission the power to force a merger of a denominational hospital with a non-denominational hospital. As we have stated repeatedly this morning and over the last number of years, we believe strongly that alternative, collaborative arrangements are available which can achieve the objectives of hospital restructuring while respecting the corporate integrity, structure and mission of the denominational hospitals.

There are many examples across this province of such collaborative ventures where the denominational hospital has been able to continue to exist, to continue with its corporate structure, and yet the goals of hospital restructuring and collaboration between hospitals have been achieved and are being achieved. A good example of that kind of collaborative venture is right here in the city of Hamilton, where a collaborative venture between St Joseph's Hospital and the Hamilton Civic Hospitals was the first major initiative in the last number of years to try and bring about major change in the way hospital services are delivered in this city in a collaborative way but yet maintain the corporate structures and missions of both institutions.

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Other communities such as London, Sarnia and a number of other communities also are in the midst of developing these kinds of collaborative ventures, which

will allow the denominational hospital to continue but which will in the long run achieve the objectives of health and hospital reform.

In reference to these issues, we would like to make two additional recommendations to the committee:

(4) That the proposed Health Services Restructuring Commission be informed of the commitment of the leaders of Ontario's three major political parties to the maintenance of the mission and corporate structures of Catholic and other denominational hospitals and that the proposed commission be directed to respect these commitments during its deliberations and in formulating its recommendations to the Minister of Health.

(5) That when acting upon those sections of Bill 26 related to hospital mergers or amalgamations the Minister of Health and the civil service be cognizant of the need to maintain the corporate integrity of denominational hospitals in order to ensure the maintenance of the missions of these corporations and that alternative methods of collaboration be found to achieve the goals of hospital restructuring.

The Catholic Health Association of Ontario, the Salvation Army and the Jewish health services request that the standing committee seriously consider our comments and recommendations.

We recognize that hospital restructuring must and will continue in Ontario and in some instances must be accelerated. We are very concerned, however, that the rights and responsibilities of local communities and providers must be balanced with the powers and authority of the Minister of Health and with the economic imperative which is confronting all of Ontario today.

We want to reiterate that Catholic and other denominational hospitals are prepared to work with the government and local communities to move restructuring ahead. We are very concerned, however, that parts of Bill 26 threaten the continuation of denominational health care in Ontario and urge that those sections be amended to allow us to continue to provide quality and value-based health care to the residents of Ontario.

Mr Clement: Thank you very much, gentlemen, and Mrs Stickland for your presentation. You brought up some excellent points. This issue of the role of the denominational and non-denominational restructuring came up in Ottawa earlier in our presentations. Upon some further research and some further statements, because it was an issue in the Ottawa region, I believe, and the restructuring that's going on there, the Minister of Health has made it pretty clear that he favours solutions that maintain the integrity of denominational representation but that he is looking to both the denominational and non-denominational hospitals to get on with the job of restructuring. The debate over denominational versus non-denominational governance should not be an impediment to the restructuring. But he's prepared to work with the various hospitals to further that initiative.

I wanted to just ask you a couple of quick questions, then. We have proposed as the government an amendment to Bill 26 which would remove the power of the minister to write or rewrite bylaws. So I'm presuming that you agree with that and that's a further confirmation of independent governance.

Mr Marr: Yes, we support that amendment.

Mr Clement: I've made also the point in earlier presentations that our changes to the Ministry of Health Act do not change the role of district health councils; they are still in the act, they still have a role to analyse, plan and make recommendations to either the restructuring commission or to the minister. Does that assurance and the presence of that language in the act go some way to assuage you that there is a possibility for local input?

Mr Marr: I think, Mr Clement, that our concern is more about ensuring that local solutions are found to local problems. We've historically stated that there is not a cookie-cutter approach to this issue of hospital restructuring across this province. Our concern with the bill, and especially the restructuring commission, is the lack of clarity at this point about the terms of reference and composition of that group.

We recognize that in some communities, where consensus has not been achieved in terms of implementation, the minister or the government may need additional tools to see that studies which have been duly conducted by district health councils with all the participation of the local community and approved by local communities and approved by the minister, get implemented. Our concern is, will the commission go beyond that kind of a mandate and actually get into the part of redoing district health council studies or making decisions on their own without any kind of local input?

Mr Agostino: I thank the presenters and I first of all feel very strongly for the role that denominational hospitals have played and should continue to play in the health care system. It's a very historic and very important and very significant contribution to health care across this province, and I appreciate very much that role and thank the people here for the role that they've played in that.

I guess the concern I have, when I hear my friends across the floor talk about the health care system and the answers you've been given this morning along the lines of, "Trust me; we will take care of that; we will look after your concerns"—I think that is part of the problem with this bill, that the regulations, which are going to be the real beef and the real meat of this matter, are not here. We will not deal with those regulations, and frankly I don't trust this government when it comes to health care. This government said that not one cent would be cut from health care; that commitment has been broken. This government is now telling every group that's coming forward, "We'll look after the concerns that you have; we'll look after the things that you're talking about." Frankly, I don't trust them; I don't think people across this province trust them.

We saw a piece of literature come out earlier in the week that talked about consultation. Government propaganda had said that they consulted with stakeholders when Bill 26 was introduced. We have not come across any stakeholders yet who have been consulted. I use the word carefully with my bishop sitting here in front of me, but I really believe that we've seen nothing but lies in regard to health care from this government. This is a continuation of that process, and I certainly would not put any faith in the government saying that they're going to

address your concerns. I think that the meat and the heart of this is the regulations that will come later.

The Chair: Mr Agostino, you've used up your two minutes.

Mr Agostino: Just a question, if I can?

The Chair: Sorry; two minutes.

Mr Christopherson: Before my colleague Ms Lankin asks a question, I just wanted to thank the delegation for coming forward and raising these concerns. I would also underscore the importance of being sure that you've got in writing, in regulation and in the law, exactly what you need, because without that, the government's intention, as we see it and I see it, is to take the powers in Bill 26, retreat back into the cabinet room and then just govern by edict, as they did in the summer shortly after they were elected. I'm very concerned that the promises they're making, and I heard them in other communities on other issues, aren't really worth much if they're not in writing. So I urge you so very, very much to make sure that you're having written dialogue. If you hear commitments here today that you want in writing, we can give you the Hansard; forward that to the minister as quickly as possible and ask for confirmation that that's what they're intending to do and you'd like to see it in regulation.

Ms Lankin: I have a couple of specific questions, but I'd like to preface them by saying we have heard from many, the concerns you've raised about the relationship between the work of the commission and the district health councils, and we will be moving an amendment to that effect. We've also heard concerns about the makeup of the commission, and we will be moving an amendment that tries to deal with that and should specifically reference denominational institutions.

On the issue of accountability in ministerial decision-making in this area, I need to inform you that the amendments the government has tabled actually go further the other way; they give the right to have powers given to the restructuring commission, delegated from the minister. So I think that's not what you want.

My question, though, is on supervisors. I will be moving an amendment which actually says that the existing due process rules that are in place should remain in place for all circumstances other than the direct decision to close, and even then there should be—

The Chair: Thank you very much. We appreciate your presentation here this morning and your interest in our process, and again I apologize for the delay. Thank you.

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ONTARIO MEDICAL ASSOCIATION

The Chair: Our next presenters are Dr Lorne Finkelstein and Dr Bill Orovan on behalf of the OMA. Good morning, doctors. Welcome to our committee.

Dr Lorne Finkelstein: Thank you, Mr Chair and committee members, for the opportunity to speak with you this morning. My name is Dr Lorne Finkelstein. I'm a cardiologist in Hamilton and an OMA board member representing district 4, which stretches from Oakville to Hamilton and around the lake to Fort Erie. With me is Dr William Orovan, a member of the OMA's executive committee and of the OMA's negotiating committee.

This morning I plan to review for you what I believe are the very constructive proposals that the Ontario Medical Association submitted to government last week for amending and improving Bill 26.

First, I'd like to say that it's important for you in the government to understand that the province's doctors and the OMA are fully aware of the issues that need to be addressed, issues that we must address together if we are to maintain, manage and deliver accessible and quality health care for the people of Ontario.

I mention this because my colleagues and I were extremely concerned and frustrated by the minister's presentation to this committee made when you first launched your hearings on December 18, and by the remarks he was quoted to have made to members of the news media following his presentation. It was ludicrous for the minister to suggest that the OMA has not been providing him or his ministry with ideas or proposals to address health care issues.

The minister invited the OMA to discuss a number of important issues back in October. We met frequently that month and we made numerous proposals to improve the health care system, some of which the minister has since adopted as his own.

The minister clearly left this committee with the wrong impression on December 18. We can only conclude that there is little, if any, accurate communication between the bureaucrats, to whom our alternatives and proposals were delivered, and the minister.

Ontario's physicians in the OMA have been offering constructive solutions in these matters for years. This morning I will review with you some of the many proposed amendments to Bill 26, a full and detailed package which our association submitted to the government one week ago today. I'll share with you some of the highlights of our proposed amendments and recommendations.

First, I'd like to address schedule I, which deals with a fundamental issue: the nature of the relationship between Ontario's 23,000 physicians and the provincial government.

Unfortunately, Bill 26 in its current form would allow the government to eliminate any formal partnership between the government and the medical profession by eliminating any agreements with the Ontario Medical Association. This is one of our main concerns with the entire omnibus bill. The government could decide it won't recognize the OMA as a representative of physicians. It won't enter into agreements and the government could decide it will terminate any existing agreements between it and the OMA.

We recommend that the government must continue to recognize the OMA as representing Ontario's 23,000 physicians.

The government must also recognize that the OMA represents the medical needs of the people of Ontario and that physicians are advocates for their patients.

The government must also continue to negotiate and respect agreements with the OMA. To do otherwise would leave Ontario as the only province in Canada where there's no agreement and no formal partnership between government and physicians.

We recommend that the government delete this section of Bill 26 and replace it with wording that would allow termination of existing agreements only upon the negotiation and execution of a new agreement between the OMA and the government of Ontario that replaces existing agreements.

Referring to schedule H, which involves who is to determine what is medically necessary, serious threats to patient privacy, a duplicate system of government inspectors and restrictions on where doctors may practise: What's extremely troubling for physicians and potentially very harmful to the accessibility and quality of Ontario's medical care is that Bill 26 gives bureaucrats in the Ministry of Health the power to determine what is and is not medically necessary for our patients.

What this means is that someone at Queen's Park, who's not a physician, could determine after the fact that a service rendered by a physician was not medically necessary. In addition, Bill 26 enables the medical review committee of the College of Physicians and Surgeons of Ontario to order a physician to repay all costs of service requested for a patient by that physician if the MRC later determines those services were not medically necessary.

What's very troubling for physicians is that absolutely no guidelines exist as to how a ministry bureaucrat or the MRC will exercise their new authority in determining what is or is not medically necessary. For example, suppose I am asked to see any one of you to assess chest pain you might be experiencing. As part of that assessment I order an ECG, an electrocardiogram, at a laboratory. The ECG results prove to be normal, and I'm able to reassure you that you haven't had a heart attack.

Now, under Bill 26, a few months later the government could deem that this normal ECG was not medically necessary. I would be charged back out of my own income the cost of that ECG. The result would be that the next time a patient would come to see me for assessment I would be very hesitant to order that test or in fact any test. As a result, the quality of care I'm able to give my patients and the quality of care my patients expect will be diminished because of the government's second-guessing of my diagnostic abilities.

These new powers under Bill 26 are unnecessarily broad and will have a chilling effect on physicians, whose first concern is and must continue to be the medical needs of our patients. Constant and intimidating threats hanging over the heads of physicians will have a damaging effect on the quality of medical care patients receive in Ontario.

I'll now focus on the confidentiality and privacy of patient medical records, which become a thing of the past under Bill 26. The OMA supports the amendments that were put forward by Ontario's Information and Privacy Commissioner. These amendments would ensure that only in the case of a fraud investigation would access be given to personal and private medical files. The OMA recommends that there ought to be reasonable grounds to suspect fraud before an investigation is launched. Information that's required by government to manage the system on a daily basis must be of an anonymous nature in order to protect the privacy of patients.

Although we've heard that the ministry may amend this part of Bill 26, the omnibus bill would create a whole new stream of inspectors whose aim would be to recover moneys paid to doctors as a result of supposed inappropriate billings. This would duplicate what the government already has in the medical review committee. The OMA recommends that if the government is concerned about the efficiency of the medical review committee, then it should adopt the expedited medical review process which has been proposed to government by the College of Physicians and Surgeons. This would eliminate the need for a duplicate stream of inspectors and would accomplish the government's objective using a proven system that is completely confidential.

As for government's proposed billing number restrictions to address doctor distribution, we believe the scheme won't work and could very likely drive many more physicians, including much-needed specialists, out of Ontario. The OMA has proposed a plan to the minister which would include the government's existing northern and rural funding along with funding from the current OHIP pool to encourage more physicians to work in northern and rural areas of the province. We've been talking with government about incentives and other proposals designed to improve physician distribution for years. Unfortunately, however, we've been unable to convince government to fund any of the significant proposals that we have made. We continue to be ready and willing to address physician distribution issues with government, but in a cooperative manner.

Schedule F of Bill 26 gives the minister powers to close and amalgamate hospitals or adjust their services. The OMA recognizes the need for significant restructuring within hospitals and it supports the general thrust of this aspect of Bill 26. However, the OMA believes these powers should be viewed as extraordinary and must be time limited. Recently proposed amendments to Bill 26 from the government indicate that the government is following the OMA's advice in this matter.

On the Health Services Restructuring Commission to be established under Bill 26, the OMA recommends that the HSRC's role should be confined to implementing initiatives that are approved by the minister. Decisions involving the significant restructuring of hospitals are for the minister alone to make, and they should not be delegated to others.

Another very important aspect of Bill 26 is that it eliminates many protections of due process for physicians in the case of hospital closure or program closure. For the majority of those physicians who are not hospital employees, other common avenues of redress are not available to them. For that reason, we recommend that doctors be given reasonable notice of hospital closure or program change and that best efforts be made to provide those physicians with privileges at other hospitals or facilities. If a reasonable notice period is not provided, financial compensation should be offered. These protections are extremely important, given that Bill 26 requires that specialists be affiliated with a hospital in order to maintain the OHIP billing number that allows physicians to provide services to patients.

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Another aspect of health care the government apparently intends to micromanage through Bill 26 is physician human resource plans, PHRPs, which are currently prepared by hospitals. We believe that hospitals, and not the government, are in the best position to determine their requirements for medical staff. The OMA proposes that the government create a standardized reporting method for PHRPs which would be provided as part of a hospital's annual operating plan submissions to government.

Bill 26 makes a number of changes to the Independent Health Facilities Act that we believe could have a very negative effect on health care. For instance, Bill 26 could extend the application of the IHFA to all services provided by physicians, making those services subject to a licence under the act. For example, the minister could designate services such as an annual health exam or sutures to be covered by the IHFA, and without a licence a physician could not provide those services. This would subject physicians to a dual licensing scheme, one under the Medicine Act, administered by the College of Physicians and Surgeons, and another under the IHFA. A CPSO licence to practise medicine can be revoked for professional misconduct, incompetence, incapacity or for failing to follow recommendations of the college, but an IHFA licence may simply be revoked or not renewed without cause and services could be eliminated from a licence at any time. This could have a major impact on the practice of medicine and would lead to a tremendous uncertainty as to the viability of a licence. This would empower the Minister of Health to remove any doctor's licence at any time with no need for the minister to show cause, and no appeal by a physician would be allowed.

The OMA recommends that this proposed change to the IHFA be withdrawn and that the government exercise, should need be, its current regulatory power under the IHFA.

Another way Bill 26 could significantly increase the uncertainty for operators of IHFs, or independent health facilities, is the new powers the government would have to refuse to grant a licence to existing facilities, revoke licences mid-term or refuse to renew a licence. None of these new powers is linked to quality of care.

The OMA feels the government should provide the operators of the IHF with as much certainty as possible. We recommend it do this by grandparenting facilities that are already providing services that the minister may choose to designate under the act, and that government revoke a licence, eliminate services or refuse to renew a licence only in cases involving public safety. We also recommend that compensation be provided upon revocation of a licence, elimination of services or non-renewal of a licence. Failure of government to take these actions would likely result in a level of uncertainty that could limit the number of physicians willing to invest in IHFs, which could potentially decrease the quality of care and result in longer waiting lists in hospitals for services such as X-rays, ultrasounds and cataract surgery.

Bill 26 would lead to even more uncertainty for the operators of IHFs because it introduces differential fees for the same services and does not factor into account operating costs and overhead costs related to services.

Further, the bill would allow a nil payment for services rendered. The prospect of having fees reduced dramatically, even to a nil amount, would lead to uncertainty among operators, which may have the same impact on patient care as a potential revocation or elimination of services from a licence that I mentioned earlier.

Bill 26 should be amended to require that fees prescribed by regulation should factor into account operating and overhead costs related to provision of services.

Bill 26 would eliminate the current preference to independent health facility licence applicants who are Canadian citizens, permanent residents or Canadian-controlled corporations. This means that future licences could be granted to non-Canadian, and in particular US-owned, corporations. The OMA is concerned that independent health facilities that are owned by non-physicians may not meet the same standards for quality of care. This change could also have a negative impact on the Ontario economy, since it is domestically based corporations that spawn job creation and provide a stimulus to the provincial and national economies.

Therefore, the OMA recommends preference for new licences be given to Ontario applicants, especially Ontario physicians.

Finally, looking at schedule G dealing with the Ontario Drug Benefit Act, we see that Bill 26 would strip the Ontario Pharmacists' Association of its ability to negotiate dispensing fees and/or have representation rights on behalf of pharmacists. This one has a very familiar ring to it.

As you might expect, the OMA recommends that pharmacists should have the right to be represented by their association and to have agreements with government.

On drug substitution, Bill 26 proposes the government pay only for the lowest-priced product within a class of "interchangeable" drug products for persons covered under the Ontario drug benefit plan. Government would no longer pay the difference between the generic cost and the brand-name cost when the prescriber writes "no substitution" on a prescription and a pharmacy charges the patient the additional cost. While the OMA supports in principle the government's program to provide patients with quality drug products at reasonable prices, we believe it must continue to provide exemptions to its drug substitution rules when interchanging drug products may result in adverse or allergic reactions in some patients. Furthermore, Bill 26 allows the minister to determine clinical criteria for prescribing drugs which will be used as standards for payment of Ontario drug benefit claims.

The OMA recommends that the introduction and use of clinical criteria should be part of a comprehensive and professionally sanctioned drug utilization review system which includes consideration of clinical criteria, quality and cost. It would make use of an expert review panel and would provide feedback to health care professionals.

The multiple issues of providing medical care to the citizens of Ontario are complex. Bill 26, as it stands now, would allow the government to manage all aspects of our health care. We believe that such decisions should be based on collaboration and partnership between government, which must decide what it can afford and is willing

to provide, the public, which must decide what medical services it wants from government, and the medical profession, whose members have tremendous expertise as medical care providers.

Mr Chair and committee members, that's a review of some of the Ontario Medical Association's proposed amendments to Bill 26. Dr Orovan and I would be pleased to answer any of your questions, after which we will provide you with a copy of the OMA's formal amendments package. Thank you.

Mrs Lyn McLeod (Leader of the Opposition): Thank you both for your presentation and for the very thorough work that you've done in presenting constructive amendments to Bill 26. I'm sure you're aware that there have been some amendments tabled by the government today, and we are all going to look to see how fully that package of amendments addresses the concerns that have been raised virtually every day that these hearings have been held. Thank God this did not become law on December 14 or there would have been no amendments to reflect the kinds of concerns that you and others have raised every day that these hearings have been held. I want to congratulate you and your colleagues because you've been able to bring the concerns forward so clearly as to what this bill in its original form would do to patient care and the access to health care in this province.

Having said that, we are going to be looking at those amendments very critically because there are a lot of issues that have been raised. The privacy one you note in your brief. There are some amendments on privacy. Nothing less than the recommendations of the privacy commissioner will be satisfactory, and I think we're going to find that still the government is looking at finding wholesale fraud in using the ability to investigate doctors' records.

I want to ask you about the "medically necessary," which seems to be addressed in part by amendments. We'll look at how well that's done. But the capacity to set fees at zero, which to me sounds like delisting by any other name, even though the government says that they're not delisting services: Is setting fees at zero a way of delisting services and, in your view, should that be done only through a process of looking at what is and is not medically necessary in a very open way?

Dr William Orovan: Setting fees at zero is even worse than delisting, because what it does is say that the physician cannot be paid for delivering the service and the patient who wants that service could not buy it. At least if it was delisted, the patient would still have the opportunity. So setting fees for medical service at zero ensures that that service will not be available.

Mrs McLeod: You've indicated a concern that billing numbers, coercive methods, would in fact make our recruitment and retention of physician problem even worse by driving physicians out of the province. There are a number of parts of Bill 26 that give the government control over who practises, how many practise and where physicians practise, including the ability to decide who's an eligible physician, the ability to set quorums, and even the ability to put in place regulations that would determine who gets chosen to go to specific areas if there are too many people. Can I assume that you would want to

see all the parts of Bill 26 that give the government direct coercive control over physicians' practising withdrawn from this bill?

Dr Orovan: The amendments that we'll table with you suggest in schedule H that sections 22 through 27 should be withdrawn, and those are the sections that you allude to.

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Ms Lankin: We all know that we just got the amendments. I don't profess to have a full understanding of them, but I have been going through them and, by and large, I think they address very few of your concerns. The OMA is still nowhere after this bill passes; the micromanagement of physician resource plans in hospitals: still there; billing numbers, eligibility issues, all of the sections in schedule H that you just raised are still a problem; still no appeal of the revocation of hospital privileges; if the hospital ceases to provide a service which is moved to another hospital, you don't necessarily get to follow your patients—all due process areas that are gone.

Let me address medical necessity, because we've been saying that the old system that had the general manager of OHIP refer a concern to the medical review committee should stay. If they want to streamline the medical review committee, then fine. But the general manager now still makes this decision, if they are of the opinion, after consulting with a physician, that it wasn't medically necessary. But let me tell you, they've separated out therapeutically necessary for other practitioners but they still only have consulting with a physician. I don't think the chiropractors are going to be too happy about the fact that the general manager's going to consult with a physician about whether what they did was therapeutically necessary. Really bad drafting problems here.

They've got a process that you still have to decide to appeal to the medical review committee. You can choose expedited arbitration, if I can use the labour term, but if you do that, you don't get to appeal the results of it at the end. Due process denied again. If you do appeal through the review committee and it's found to be that you were only partially right and you get partial payments, less than half of what you billed for, you've got to pay for the review process. There are whole sections in here about time frames and everything else which we've not seen until today which really totally change the process of doctors' decision-making and, I would now argue, other health care practitioners who haven't had a chance to address it. Can you comment on this section, if you know anything about it yet in the amendments?

Dr Orovan: I have had an opportunity to review the amendments very briefly, and I would agree with most of your concerns. The amendments do remove the minister's ability to appoint a second stream of inspectors, and we support that.

Ms Lankin: That's good, yes.

Dr Orovan: But they do change the standard by which the general manager may initiate an investigation. He used to require reasonable grounds. In the amended form, he only needs to be "of the opinion." He does need to consult a physician, but who that physician might be is not defined in any way. If you select the fast-track

process, and you may end up with a single-physician review, you do not have an opportunity to appeal. So it's removed one set of problems and introduced a whole series of others.

Ms Lankin: A whole new set, yes.

Mrs Janet Ecker (Durham West): Thank you, doctors, for taking the time out of what I know would be a very busy schedule to come forward and table some very detailed, very comprehensive amendments. I look forward to being able to go over them further.

One of the things that I think we've certainly heard and I've certainly heard in the past from physicians is about misuse in the system by, yes, physicians and consumers. We acknowledge that that's out there. It's interesting to note that the entire MRC process is about misuse of the system. That's why there are powers there to talk about overbilling that is perhaps not medically necessary. I think it's interesting that in a recent poll that Maclean's did, 70% of physicians agreed that some of their colleagues—a minority, but some—were encouraging people to come for visits that were not medically necessary and that there were problems with it. So I think this is something we're interested in trying to pursue.

Under the previous process, the general manager who had questions about billing practices, questions about whether they were medically necessary, referred them to the MRC. The college that administered the MRC has said that process has not been working, for many reasons I won't get into, so the government had attempted to make some changes. I understand that the college and the OMA have been working together to come up with recommendations as to how we can streamline that process and maintain that role for that MRC so that if there is misuse, it's being addressed with physicians: peer judgements and that kind of thing.

If the government were to adopt those recommendations, to look at those recommendations and put them forward, would that ease some of the concerns you have? Because I think that answers "medically necessary," confidentiality, judgement by peers; that is in that process.

Dr Orovan: I think we addressed a little of that in Ms Lankin's question earlier. I think they have gone some distance towards that. We were appalled by the thought that the minister might appoint his own personal police force independent of the college, so that issue has been addressed, but it's introduced a whole series of other issues. There is no due process. As I said a moment ago, in order to initiate an investigation, the general manager of OHIP at least needed to have reasonable grounds to believe. Now he just has to be "of the opinion." It provides the opportunity for fishing expeditions on the part of the general manager of OHIP.

We all want to get rid of any fraudulent billing practices. The minister himself acknowledged that fraudulent billing practices are an exceedingly small part of the total fraud issue.

The Chair: Thank you, doctors. We appreciate you being here this morning and making a presentation to us. Have a good day.

Mr Agostino: Mr Chair, before we go to the next one, a request and a letter from Dr McCutcheon, president and

CEO of Hamilton Civic Hospitals, along with a letter which basically outlines that he's been denied access and would like to have read into the record this brief and that it be circulated to the committee. On behalf of Dr McCutcheon and the Hamilton Civic Hospitals, I would like to table this with the committee.

BOEHRINGER INGELHEIM (CANADA) LTD

The Chair: Our next presenters are from Boehringer Ingelheim (Canada) Ltd: Dr Karen Gilberg, Mr Alan Fukuda and Mr Barry Wilson. Good morning and welcome to our committee.

Dr Karen Gilberg: My name is Karen Gilberg. I am a physician and vice-president of external affairs and health economics for Boehringer Ingelheim (Canada) Ltd, an Ontario-based, research-intensive pharmaceutical company. With me are Alan Fukuda, head of external affairs, and Barry Wilson, a member of our external affairs group. On behalf of our company, we want to thank you for the opportunity of presenting our perspectives regarding the health care portion of Bill 26.

As I just mentioned, BICL is an Ontario-based, research-intensive pharmaceutical company and is a member of the privately owned Boehringer Ingelheim group of companies, with headquarters based in Ingelheim, Germany. Canadian operations commenced in 1972 at Montreal and now are headquartered in Burlington, Ontario, with approximately 500 employees in Canada involved in five health businesses coast to coast.

Our five Canadian business areas consist of human prescription pharmaceuticals, human self-medication products, animal health products, and fine chemicals, all located in Ontario. In addition, we have a basic research institute located in Laval, Quebec, involved in basic research and drug discovery. This centre is the research centre worldwide for drug discovery in the area of virology for Boehringer Ingelheim. In addition to these businesses, we export pharmaceutical products to the Caribbean from our Ontario-based plant.

In 1994 the annual federal Patented Medicine Prices Review Board report listed BICL's research and development expenditures to be 33.4% of sales, versus an industry average of 11.3%. These figures are consistent with our expenditures in the preceding years and into the foreseeable future. In addition to our own in-house basic and clinical research, we promote and support significant basic and clinical research projects in Ontario hospitals, universities and research institutions. Most recently, BICL and our parent company, in conjunction with the Samuel Lunenfeld Research Institute of Mount Sinai Hospital in Toronto and Sequana Therapeutics in California, announced a joint international research alliance to attempt to isolate, clone and sequence genes associated with asthma, with the potential for development of new treatments for this very common and costly disorder.

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During 1994, BICL invested approximately \$8 million to fund an extensive range of medical and scientific research projects in Ontario, and in 1995 we were designated as the centre of excellence for health econ-

omic research for all the Boehringer Ingelheim companies in North America.

This decision has resulted in the creation of additional new scientific and medical full-time positions in addition to the approximately 125 full-time scientists we currently employ. Such positions are pivotal to a thriving and competitive research-based pharmaceutical industry and to supporting scientific and medical research in Canada, as well as to the support of the scientific and medical research community within Ontario.

At BICL, our research activities are directed towards fundamental discoveries and development of new therapeutic agents that provide added value, measured both in the short and the long term, to patients, physicians and the health care system overall.

Let me proceed by stating that our representations to the committee today reflect our strong commitment to improved health care via the development of innovative and cost-effective medicines to ultimately improve overall health care outcomes.

Secondly, we are proponents of the principles of disease management. We believe that pharmaceuticals, coupled with clinical practice guidelines and care maps, will enable better decisions about the management of patients and their diseases, while placing more information and control in the patient's hands.

We also believe that comprehensive disease management will enable physicians to utilize pharmaceuticals and other interventions more effectively, resulting in the provision of more value for every dollar committed to health care.

Despite the small portion of health care dollars spent currently on prescription medicine—that is, 5.5% of national health care expenditures are on pharmaceutical costs and 2.4% on patented prescription medicines—prescription drugs are typically the continual focus of cost-control measures.

In fact, “pharmaceuticals are the most widely used of all technologies and are one of the most cost-effective when used properly,” the Science Council of Canada reported in a 1991 study of medication and health policy. “Making optimal use of medication technologies has never been more crucial.”

This is an area in which I'd like to make some personal notes. I believe that it's imperative that I give you some examples of the types of pharmaceutical advances that the Science Council refers to, examples that have revolutionized and improved health care just in the 23 years since I graduated from medical school.

The first example is of cimetidine, which is a drug that's used for ulcer disease and the treatment of gastrointestinal bleeding. At the time that I finished medical school and entered into training, the majority of beds on gastroenterology services in the hospitals were filled with patients with GI bleeds and ulcers. In addition to that, the most common procedure done in hospitals was vagotomy pyloroplasty, a surgical procedure for the treatment of ulcer disease and bleeding.

Since the introduction of cimetidine, the number of hospital days for inpatient treatment of GI bleeding and ulcers has dropped dramatically. The frequency of this surgery is almost non-existent now and the number of

days which patients have to lose from work has decreased to being negligible. This is a significant improvement in health care.

Later on, during my training in my own specialty, I was involved in research with a compound called bromocriptine. This was a product that was being developed for use in pituitary tumours which secrete a product called prolactin. At that time, the only treatment available was radiation and invasive surgery. Patients who are unable to have the pituitary tumour shrink adequately develop blind spots because of the location of the tumour, near the optic nerves. Since the time that prolactin has been approved and used for this, the number of surgeries and radiation has decreased and the incidence of blindness due to pituitary tumours has significantly decreased. This drug has gone on to be developed in a second indication of Parkinson's disease, another very critical illness.

When I first joined the industry, the company that I worked for was just beginning development of ultrashort-acting general anaesthetic agents. We recently heard, in the restructuring of the hospitals, that the potential of having hospitals dedicated to outpatient surgery, day beds, would occur. This has been made possible because of products like the ultrashort-acting anaesthetic agents; that is, hospital days have been cut, patients are able to go home to their own families and not stay in hospital. This is a huge saving to the health care system overall.

The last example is that of inhaled corticosteroids, which are used for the treatment of patients with asthma. Prior to the availability of these compounds, patients received oral corticosteroids, which created significant side-effects in them. The ease of use of the inhaled steroids has led to decreased exacerbations of asthma, and this itself has led to decreased emergency room and hospital room visits. Both of these have also led to an improved quality of life for patients and their families, with decreased school absences and decreased work absences.

We cannot emphasize enough that we and our research-based colleagues in the industry are very concerned that Ontario's history of silo budget cost management severely undermines the more important goal of integrated health care management and improved health care outcomes. We therefore commend this government's willingness and early efforts to reform aspects of the ODB to reduce expenditures while maintaining quality. We sincerely hope that their efforts to control expenditures will in future result in the ODB being able to quickly assess and reimburse new and innovative, cost-effective medicines for the benefit of Ontario residents. As such, we urge you all to assist in changing Ontario's past course of component cost management to one of integrated disease management which includes outcomes assessment and continuous quality improvement.

Our representations will also reflect BICL's support for the principle of optimal therapy or optimal patient care; that is, the practice whereby a patient receives the treatment most appropriate to his or her specific condition.

This morning, we wish to focus on several proposed legislative changes to the Ontario Drug Benefit Act and the Prescription Drug Cost Regulation Act as they relate

to our business interests as well as their effects on the present health care system in Ontario. Specifically, we will comment on copays and deductibles, deregulation of the private marketplace and transparency in the system. With these principles in mind, we wish to proceed with comments pertaining to the issue of copays and deductibles.

Cost-sharing is quickly becoming a fiscal necessity in the economic reality in which we all work and live. As you are all aware, Ontario is presently the sole province in Canada which does not require a patient contribution from those who receive publicly funded prescription products. As such, we fully understand and support the need for the government's proposed model in which contributions are linked to the patient's ability to pay.

Health care in Canada is evolving and becoming more integrated. Governments and consumers need to be more knowledgeable about disease states and how they are being managed. Patients, in turn, must be more responsible and active in their own health care. The health care market is changing rapidly from a provider-driven one to one driven by the needs and wants of the consumer and of society.

Consequently, due to the present fiscal realities the Ontario health care system faces, we believe that consumers must assume more responsibility, both for maintaining healthy lifestyles and, to some degree, for assuming a portion of the cost associated with their treatment.

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However, it is important to emphasize that the proposed copay model of ability to pay should not unduly disadvantage those on social assistance or those seniors on guaranteed annual income supplements. We believe that the government's proposed legislation has the least financial impact on the consumer when compared to other provinces in Canada.

BICL also supports the government's proposal to deregulate prices in the private marketplace for pharmaceuticals. We support this proposal and its intent to create a more competitive environment where government-imposed pricing structures will not constrain purchasers of pharmaceuticals.

Contrary to recent media articles, we contend that the price of pharmaceuticals will not automatically increase in the private sector. We are referring, when we talk about price, to the price which we sell our products at to the wholesaler and retailer. We cannot control what will happen to the pharmacy markup, but we suspect that competition can force the markups to be kept at a low level.

However, for this to occur, the consumer must assume the final responsibility to shop for the best price. To do this in an equitable manner, the consumer must be informed. The only way to ensure that the consumer is informed is to inject transparency into the system whereby the pharmacist must post the dispensing fee, markup and acquisition costs of medications. We strongly recommend that the ministry pursue this initiative.

You are all familiar with the strict federal Patented Medicines Prices Review Board pricing guidelines which regulate prices of new products and restrict price increases of existing innovative pharmaceutical products

to the consumer price index. It is important to note that generic products are not subject to these PMPRB guidelines. Despite the fact that PMPRB has allowed these marginal price increases for patented medicines over the last several years, the provincial formularies have disallowed or frozen any increase. In fact, BICL has not implemented a price increase in several years, and we do not anticipate this to change due to Bill 26.

BICL has a one-price policy to all retailers and wholesalers in the province, and we do not envision this policy changing as a result of the deregulation of private sector pricing. At this time, price negotiation between the government and the manufacturers on the reimbursed drug benefit price is not an area where we foresee difficulties. However, we would welcome and require further clarification of the negotiation process.

In closing, BICL recognizes the need for this government to restore the fiscal health of this province and we are supportive of the government's general direction regarding the ODB and PDCRA components of Bill 26 to achieve this objective.

Specifically, we recognize the need for a system of copay and deductible. We encourage the minister to put in place the necessity for pharmacists to post dispensing fees, acquisition costs and markups to allow the consumer to make an informed decision on where to buy their medications. We are supportive of the deregulation of the private sector pricing, especially if pharmacists are required to post all these costs. We believe that the proposed legislative changes are important to the future of the pharmaceutical industry, to research and development, and to the overall economy of this province.

More importantly, however, we believe that this government is attempting to make change at a time when change is most needed in order to guarantee that Ontario's health care system remains viable and responsive to the people of this province. We are pleased to learn that the present time-consuming system of offsets will be eliminated. We commend this action on the part of the government.

Finally, we encourage the elimination of the silo mentality by budgeting for total health care and by the evaluation of total health care outcomes.

On behalf of BICL, we thank you for the opportunity of making a presentation before the committee and would be pleased to answer questions that you may have.

Ms Lankin: I appreciate your participation in the hearings. I think that your presentation follows very much like the other brand-name pharmaceutical industrial representatives who have come forward, and there's a great consistency again in the brand-name pharmaceutical industry. I say that specifically because the generic companies have had a different perception of some aspects of it. In fact, that's almost predictable, in my experience with those parts of the industry. I would have to say on some of the aspects of your presentation, from other health care professionals, whether it be pharmacists or whether it be particular physicians like psychiatrists in dealing with medications for persons with mental illnesses and/or psychiatric disabilities around issues of co-pay, there's been a very different position put forward. So those things are all up there and debatable.

There's also some very contrary evidence that's been provided to the committee on the effect of deregulation and whether prices will go up or down in the general market. I don't think anyone actually knows. I'll be fair on that. I appreciate your opinion, but what we've heard has been very divided.

One thing I wanted to ask you about is the prices of your products, the patent protection drugs, to the ministry under the ODB, because it's going to be subject to a process of negotiation. The minister has indicated he believes that, being just about the largest purchaser out there, he's going to get a better price from you. Yet we've heard from other representatives of the industry that, given the federal regulation and the PMPRB process, you've got a one-price policy; you're not about the change that, and there isn't really much room for the minister to gain there. We've heard from the generic companies on their side of the issue, and that's another thing, but I'd like you to address that because you are federally regulated. Are the taxpayers going to get a saving under this new scheme of negotiations with you for your drugs?

Mr Alan Fukuda: Well, I think we envision that the Ontario government, as you said, will continue to be the largest customer, so there may be savings for them to incur. But going back to what Dr Gilberg said, we always have had a one-price policy. So presently and into the future the government will continue to get the best price and that price is also shared by the private sector.

Mr Clement: Thank you very much for your presentation and I'm very pleased to hear that you feel our changes to the ODB to allow for some accountability and for it to exist in a fiscally responsible manner—that we're on the right track in that regard. I thank you for your comments on that.

I thank you also for your view that the way we are proposing the copayment will have the least financial impact on our consumers compared to the other provinces and how they attribute copayments to individuals.

I want to come back to Ms Lankin's point, because we have to be fair to her point of view. We have her different evidence with respect to how prices will go for drugs once we deregulate, and the opposition has been quite good at repeating the point of view that the prices will go through the roof; they'll escalate to a great extent. So I want to thank you for bringing to the committee's attention once more that there is a federal body called the Patent Medicine Prices Review Board which does have a cap and has very strict criteria for pricing for patent medicines, which are in effect a monopoly because that's why you have a patent, and that will have a very large impact to either stabilize or reduce prices in the patent medicine field.

We also have the generic aspect of our industry, and I know you're not experts on that, but is it your understanding that there's enough competition between both patent medicines and generics and within the generic field that that will have a stabilizing or reducing effect on drugs?

Mr Fukuda: Yes, I think there is sufficient competition. First of all, you mention that brand-name products, single-source products, are a monopoly. That is true in terms of the chemical; it's a monopoly. But, like in all

marketplaces, there is more than one asthmatic drug, there is more than one GI drug, so there is obviously competition among these brand-name products that will inject some price control as well. But overall I think things will not change greatly after Bill 26 in terms of prices going up. I just cannot see prices going up.

Mrs Caplan: Thank you very much for your presentation. It's very similar to some of the other ones that we've heard from the drug companies. I share your goal for optimal therapy and I'm pleased that it was included in the presentation, because we haven't heard that from everyone and that's something I feel very strongly about. What that means is that people get drugs that will help them and that the whole process of using drugs is to have a good result, for anyone who doesn't know what "optimal therapy" means.

I don't see how Bill 26 is going to achieve optimal therapy when you're going to tell people they have to barter—that's competition—or shop around. A mother with a child with a 104° fever isn't interested in getting the best price for the drug; she's interested in getting optimal therapy and getting her child well as quickly as possible. I see you nodding your head.

We've heard from the mental health associations that ex-psychiatric patients and people who are still on drugs for mental health reasons get a very small prescription frequently because there are serious compliance problems—they don't take their drugs properly. Also for seniors, frequently huge compliance problems. So this bill will exacerbate that by making people choose between food and drugs, especially, we've heard, those on the comfort allowance—20% to 25% of their comfort allowance is going to be taken up with drugs—and people on disability pensions and so forth, with limited incomes.

You tell me how you see Bill 26 achieving optimal therapy.

Dr Gilberg: Let me give you an example with regard to your first comment about the mother with the child with a fever of 104° shopping around. One of my daughters requires medication on a recurrent basis. I have three pharmacies in the area. I have shopped around in order to ensure that I know what the various pharmacies already charge for that medication, what their up-charge is, and so the next time I have a prescription for another product, on an urgent basis or not, I am going to know which pharmacy is the best one. I think it is critical that the consumer start to look around before the urgent situation occurs.

Mrs Caplan: I think you've raised a really good point. What about people in small communities where they don't have the ability to shop around; there's only one drugstore?

The Chair: Thank you very much, Mrs Caplan.

We appreciate your being here this morning and your interest in our process.

HAMILTON-WENTWORTH DISTRICT HEALTH COUNCIL

The Chair: Our next presenters are from the Hamilton-Wentworth District Health Council, Ms Susan Goodman and Dr Susan Watt. Good morning. Welcome to our committee.

Dr Susan Watt: It's a privilege to be here.

Interruption.

The Chair: We'll have a short recess.

The committee recessed from 1103 to 1110.

The Chair: Welcome to our committee. Questions, should you allow the opportunity for them, will begin with the government at the end of your presentation.

Dr Watt: Thank you for having us here.

Interruption.

The Chair: Obviously the people don't want your voice to be heard. I can't control that, so we'll recess. The committee stands recessed until such time as we can conduct our hearings.

The committee recessed from 1111 to 1114.

The Chair: I'd just like to explain that we do have a couple of options here. We basically are here to listen to the people of Hamilton. We are here until 5 o'clock this evening. We are prepared to listen. Now, we can't listen in this kind of an environment, so if you want us to listen, we would expect that you respect us.

Interruption.

The Chair: If you don't want us to listen, we'll just go home.

Interruption.

The committee recessed from 1115 to 1120.

The Chair: Okay. Let's try it once more and see if we can get on with our proceedings. Unfortunately, we are going to have to cut into the length of all of the presentations a little bit. The floor is yours.

Dr Watt: We come to present to you this morning as the Hamilton-Wentworth District Health Council. Although two previous ministers are around the table, I would like to briefly tell you there are 33 district health councils in Ontario covering now 100% of the Ontario population. This service advises the Minister of Health on coordinated planning from a local perspective and provides a link between the government and the community.

The major activities that the district health councils have been involved with around the province recently have had to do with restructuring. In Hamilton-Wentworth this has been an attempt to look at system-wide restructuring in the delivery of health services. This initiative preceded the present government and, indeed, two previous governments. The health council has taken a serious look at how it can have a plan against which it can make judgements about the advisability of service mixes, proportions of hospital beds to population, the kinds of services that this community needs to get excellent health care, to ensure excellent teaching and to continue the tradition of excellent research in Hamilton-Wentworth.

We are only going to comment on limited sections of Bill 26 that particularly address the issue of planning, since that's the domain of district health councils. However, I do not wish it to be thought that our absence of comments on other sections of the legislation necessarily means that we condone those other pieces of legislation. We are, however, going to comment on those areas that we know best and feel we can provide some sound advice to this committee on.

If we can look first at the proposal of a restructuring commission, we believe that there needs to be a direct connection between such a commission and the local district health councils to ensure that community health needs are addressed through an approach to developing integrated health care delivery systems.

The commission should be there and established to serve local restructuring implementation committees, not the other way around, and implementation should be led and managed locally. The commission may serve a reasonable purpose as a roadblock-buster where problems emerge in getting a well-entrenched system to consider other options that local communities have developed. We believe in locally grown and locally developed solutions to our health care system, recognizing that for some of us that locality stretches far beyond our immediate geographic boundaries, as in Hamilton-Wentworth where we provide tertiary services to a significant section of central-west Ontario.

We believe that the appointments to the commission should include individuals who understand local health planning and that the commission should have the capacity to interface directly with district health councils.

We believe that the ministry needs to provide effective principles for reinvestment in the community of any cost savings achieved through restructuring. We need funding models for effective, flexible and responsive delivery. We need aggressive planning benchmarks for health service restructuring. We need to know that the success of the restructuring is going to be measured by health outcomes, not just by dollar outcomes.

It is our opinion that, in some instances, the appointment of personnel to make the implementation of health services restructuring happen may be necessary. We are concerned that this not be a sweeping power but targeted specifically for the purposes of unsticking the system and getting new systems in place when the minister has decided that this is the direction in which it should go. Our job is to advise the minister. However, we believe in voluntary governance. We believe that it provides the mechanism for critical community input into decisions which affect local health care. This local voluntary governance needs to be respected in the decision-making process in health care restructuring.

We are concerned, from a planning perspective, about the amendments in the Independent Health Facilities Act. We believe that licensing, funding and quality assurance must be within a context for developing an integrated health delivery system which is based on community needs. It needs to be more than simply a demonstration of utilization, so that independent health facilities fit within this broader health planning context.

We believe that provincial standards on numbers and types should be established within the context of ensuring universal access to high-quality care. We are concerned that independent health facilities may begin to drive the system rather than responding to a need in the system, particularly if for example hospital corporations were to pick up the operation of independent health facilities, or if there were services that we have come to expect reasonably to be provided within our communities in the public sector that get carved off into independent health facilities. So we are very concerned about whether or not

this will lead to independent health facilities driving the health care system in this community rather than being some kind of adjunct to that system.

Following after the presentation from a pharmaceutical company, I dare to be quite conservative in my recommendation to this committee about pharmaceuticals. What I am very concerned about as a planner is that deregulation will add costs to care both in hospitals and in the community and that what we're doing is not a cost reduction but rather a cost transfer. It may cost the minister less money but it won't cost the public less money, particularly if more and more care is going into the community and those transfers of costs are already notable in our community. Certainly, in last week's consultation with the community, and I spent nine hours a day, four days last week talking to people and listening to people in the community, their concerns were about these kinds of transfers of costs which don't represent a real cost reduction at all, but simply a question of who the paymaster will be.

We share the much expressed concern about the potential for breach of patient privacy in terms of health records. We wish to make it quite clear that from a planning perspective there is no need to have access to clinical records individually, but rather to the aggregate data on utilization and need.

We believe that the processes in amendments to the Health Insurance Act and the Health Care Accessibility Act have the potential to undermine professional judgement of clinicians without appeal mechanisms. In our community that would not be an acceptable move.

We also believe that these amendments will again promote the transfer of costs to patients as uninsured services. We are very concerned about that because, although we might like to think of health care as a market, all the evidence is that it doesn't operate as a free market. This is a place in which one must, as a patient, accede to some of the expertise for which we pay quite dearly.

Finally, we are concerned about the amendments to the Pay Equity Act. We are concerned about the elimination of pay equity to low-paid workers who provide care to our most vulnerable persons, and we certainly know, in our analysis of personnel in our system, these would be the people who are providing hands-on care to our elderly, to our chronically psychiatrically disabled and to people living in protected settings in the community. We are very concerned that is the group that is going to be hit by the proposed amendments to the Pay Equity Act.

These are already, at best, precarious situations in our community. We know about them. We have advised this and previous governments of our concerns about this part of the system. To remove the pay equity would further jeopardize these groups that we are being told about by our community on a regular basis.

In summary, generally we support government's role in facilitating the implementation of health care restructuring based on comprehensive community plans. As a health council, we are both willing and able to provide input and support to help maximize the value of the Health Services Restructuring Commission. We believe that there must be a critical link between local planning

and implementation that must be maintained with the commission and indeed with the ministry.

We would be pleased to answer questions and have provided you with a full submission.

1130

Mrs Ecker: Thank you for coming and putting forward a very detailed brief with some very comprehensive and excellent suggestions. I'm sorry we have been a little delayed today in terms of getting to you, but I was very pleased to hear what you've put forward.

I think one of the points that you make very clearly is about the value of the district health council, the value of the local planning process. I've been a volunteer in a restructuring exercise put on by my local DHC and was extremely impressed by how well it was done. I think we are moving ahead with some very good suggestions in that area which will improve the health care in that particular region.

I guess the minister, as I understand it, has been very clear that that link must be maintained. If we were to make that more explicit in some fashion, that there is clearly an intent and that clearly the objective is to continue to work on implementing what the district health council process which was under way when we came in last year continue, would that assist in the district health councils and give some comfort to them that the work you are doing should be continuing?

Dr Watt: It would be a necessary but insufficient move to satisfy us at this point. We do know about mechanisms. One of the problems with restructuring in periods of tremendous change is that we are not quite sure what you are restructuring toward and what support you are going to get at the end of the road. We are talking about thousands of hours of community time in restructuring by professionals and citizens alike—

Mrs Ecker: That's right.

Dr Watt: —and that in the effort to get the minister good advice. We fully recognize that the minister may or may not take that advice, but we certainly would like to know that if the advice is taken we have something to do with how it is implemented. The plan is only half of it. How you get it together and how you get your community to work together will be the success or failure of whether those recommendations work at the end.

Mrs Ecker: Because the minister said again I can speak with some experience in my region, has asked the district health council to continue the overseeing of the implementation process because again, he wants that work to be done so the ministry can make appropriate restructuring.

I think the other point that I would like to make is that one of the messages we've heard loud and clear from people is the need to reinvest savings, the need to reinvest in front-line services or in community services as we move money out of the hospital structure. I think that we have also heard from areas that feel they need more reinvestment for various reasons: The north has unique needs; growth regions have unique needs, so some people in effect are asking for more money than we might be able to give to other people. I guess what the minister has made clear is that there will be reinvestment in local communities; there will be reinvestment in programs. Of course the challenge will be, "How much?" If some

people are going to get less rather than more, and depending on the recommendations that come forward, that is going to be difficult.

Mrs Sandra Papatello (Windsor-Sandwich): Today is the first day a member of the government's side has indicated that there may be an amendment concerning the DHCs. I am pleased to hear that today.

As you mentioned, it doesn't go far enough. The story that we've heard to date over the last couple of weeks has simply been: "We're not changing anything to do with the district health councils. They're okay. We're not touching that." Well, the reality is that when you touch every other aspect of these acts, the role they had absolutely changes because now, with such dictatorial powers placed with the minister, the function of the DHCs change automatically. Your point is well taken. However, we are still looking forward, Mrs Ecker, to what you will introduce as an amendment that relates to the DHC, now that you are on record as indicating that.

Mrs Ecker: I didn't say we were going to do that.

Mrs Papatello: I'd also like to mention the point about reinvesting of savings, which has been critical to every DHC in Ontario. Again, we are hearing the general comment that gives some kind of comfort to communities that the money saved in their communities is coming back to them. This again is a misrepresentation by committee members in every town this hearing has been moved to, and they must be on record for this. It is a complete misrepresentation.

The minister in fact is on record in the House as denying that savings found within communities will go back to their communities. Instead, he said it will go back into the provincial pot. "Maybe, maybe, maybe something might come around somewhere else in Ontario." That is the minister's line. For committee members to suggest anything else is absolutely inappropriate. That is a fact, we have that on record and we've been very explicit with the minister.

Where I come from as well we've done massive restructuring. If what happened in Windsor would happen in Toronto you'd shut down 22 hospitals, and that's what's happened in Windsor. We've lost literally 50%. So we have a natural concern about this.

Have you addressed that in your restructuring processes so far: the reinvestment into local communities and the move into local community services outside hospitals?

Dr Watt: The restructuring process that we're involved with is not just for hospitals; it is for the whole community. Our council convinced the ministry that it was really important not to carve off and just look at hospitals but to look at the whole system. So we're keenly aware of that and we certainly will be looking at total packages when we bring our recommendations to the minister.

Mr Christopherson: I'd like to comment on the public demonstration we just witnessed before I comment on the presentation. Regardless of how people feel about that kind of disruption, in terms of the process of legislative work, the fact is the government shouldn't be surprised when people react that way. When you take a bill like Bill 26 and try to take so much power in one fell swoop and exclude literally thousands of individuals and groups, you're going to get that kind of reaction. This is still a

democracy, whether you want to accept it or not, and you're going to continue to see that kind of reaction over Bill 26 long after you've passed it and rammed it through the House. So get ready. There's a lot more to come.

With regard to the presentation, I sat on a DHC some years ago, in another life, and recall what it was like trying to function in those changing times, and things were really just beginning to show the early signs of change. I also want to focus on the dollars being reinvested and to ask whether you have any comfort at all that the work you're doing now and the work that's been done in the past, and Hamilton is quite a bit ahead of a lot of other communities in terms of comprehensive health care—what is your comfort level with regard to your ability to keep those savings in this community at this point?

Dr Watt: I would have no comfort level at the moment. The fact is that the district health council will make a report to the minister, and one would hope that the minister will attend to that report, but that's the level of comfort I have about that.

Mr Christopherson: That speaks volumes, and I expected that answer. The reason I asked it is that there's an inherent contradiction in the result of what's happening in this community and other communities in health care and what the government talks about in terms of devolving responsibility. The whole part of Bill 26 is supposed to be to empower communities to take control over their own destiny. The reality is that in one of the most critical areas of concern, health care, you're leaving the impression that you're taking away—and I say this to government members—the right of local communities to determine for themselves, and if they are successful, you look as if you're ready to pounce and scoop all that money out of this community and every other community that tries to come to grips with escalating costs and more and more pressure on health care.

I would only say to the DHC and everyone else in health care in this community that at the end of the day this government intends to do whatever it is it intends to do. As I said to the other groups, if you don't see it in writing, then you ought to expect that you've lost your argument.

The Chair: Thank you, ladies. We appreciate your attendance here today and your interest in our process.

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Mr Agostino: Mr Chairman, before the next group, can I put into the record—I'll be doing this all day, so it'll be no surprise to the committee—present to the committee a brief presented at the shadow hearings by the Canadian Union of Public Employees, Local 768 of St Joseph's Hospital, and the Canadian Union of Public Employees, Hamilton-Wentworth health care workers joint action committee, both presented at the shadow hearings. I'd like to submit this to the committee for their consideration.

ASSOCIATION OF ONTARIO PHYSICIANS AND DENTISTS IN PUBLIC SERVICE

The Chair: The next presenters are the Association of Ontario Physicians and Dentists in Public Service. Welcome to our committee. Unfortunately, our times are

being cut back a little because of some problems we've had today. We're down to 20 minutes, so if you could shorten your presentation a little to allow some time for questions, they would begin with the Liberals.

Dr John Deadman: I am John Deadman. I am a psychiatrist at Hamilton Psychiatric Hospital. I am also representing the Association of Physicians and Dentists in Public Service, which is a professional group that represents all the doctors who work in the 10 provincial psychiatric hospitals, plus other physicians who work in departments of government throughout the provincial civil service.

In view of the time, I won't read the brief, which has just been passed around. I'll make a few brief points and then leave some time for questions. Before I do that, let me introduce my colleagues to the committee. With me are Debra Eklove, the executive director of the association that represents the physicians in psych hospitals; Dr Murray Kronis, a dentist at the Mental Health Centre, Penetanguishene; and Dr Ed Rotstein, a psychiatrist at Hamilton Psychiatric Hospital.

As I mentioned, I don't intend to read the brief. Most of the points in there have been made by other groups, and in most cases, several times, so you should be familiar with most of the stuff in there. I've got four points that I'll go through very quickly and then we can respond to any questions.

The first is the question of confidentiality. The positions taken by a number of other groups we can subscribe to very well. Our big concern is the special concern about people who have psychiatric problems; they are particularly sensitive to confidentiality problems. Even though I heard through the news media recently that there is a plan to put a sunset clause on that—and I don't understand exactly what that means—I really don't think that's quite sufficient. Even having that, what I will call the bill's provision for people to get information without going through the usual route is unacceptable.

The second point I would like to make is that we have some problems with the \$2 dispensing fee for our patients. I should point out that the medications we use with these patients are not that pleasant to take. Our folks definitely do not like taking these drugs, and even the very small disincentive of \$2 for people on a welfare level of income is a barrier and I think will lead to non-compliance on the part of our patients, which means rehospitalization in many cases. This is one of the unintended adverse consequences of what seems like a good move to control costs. I think it'll have exactly the opposite effect, and that's true for a lot of the ways of controlling costs that have been proposed in the bill.

Another point I would like to make is that there are provisions in the bill which allow a minister to exercise certain powers, which he does not have now, to require where physicians may practise. For example, the clear intention is to encourage people, require them perhaps, in order to have hospital privileges, to require them to work in underserved areas and, particularly in the case of psychiatry, to require them to work with the severely mentally ill.

I should point out that for our group at least, we're already doing that. That's where we are. This is not

something that affects us in that sense. If we have any problem with these provisions, it is not that we say they shouldn't happen, but the way in which it is being done.

We really think we need some process whereby we can get people into these areas, because at times we feel really quite beleaguered in trying to deal with these huge problems for the severely mentally ill or trying to get people to provide service in more remote parts of the province, and we've just not been able to deal with this effectively. We're saying that we don't think putting billing number restrictions, requiring people to work in hospitals in order to have a billing number, is going to work. We may be in favour of the principle, but we don't think the way that the bill goes at it is likely to work.

We would encourage the government to look at that one again. In particular, we'd like you to look at incentives that really might work, and we'd like them to look also at the question of whether the training of psychiatrists is adequate to do the job psychiatry is expected to do in a modern environment. That's really where you ought to be looking.

I'll stop and leave a few minutes for questions.

Mr Agostino: I've had a chance to review the brief. You've made some excellent points, particularly as it affects the individuals you deal with, that is, the mentally ill in this community and across this province.

You talk about the sunset clauses that may or may not come for certain parts of the bill. The simplest way of explaining that is that suspension of democracy, Tory-style, will only be for the time they choose to suspend democracy, whether it's in hospital closings or any other provision. The sunset clause is something they have thrown out a number of times for provisions in parts of this bill, but it very clearly says that the dictatorial powers they have will be given to them for the period they choose to be dictators. After that time, hopefully we'll go back to a democratic system of doing things in this province.

On the issue of how it affects the mentally ill, you talk about user fees as they affect an individual. Last night, you were on a cable program with Elinor Caplan and a representative of one of the hospital unions, and a young woman called who is on medication for a mental illness that she's experienced for a number of years. She's very concerned about the fact that she's going to have to make some choices. Because of the nature of the medication, she cannot do it once a month or every two months; it has to happen more often. She really is at a point where she's going to have to make some choices whether she can afford to continue taking the medication. To many people it might not seem like a lot of money, but for this individual on a very fixed and very limited income, it's going to come down to a choice between choosing whether she can afford to eat or whether she can afford to pay for her medication.

We're concerned that we're going to see much more of that, along with the various types of cuts in services for the mentally ill. What do you believe will be the result of these user fees that are now in place, and how can that impact not only the people who are in institutions, but many people who aren't in institutions now but who are in homes and may end up on the street as a result of some of these changes?

Dr Deadman: The big thing we're concerned about is that some of the folks who have been on these medications aren't even going to think it through to the point the person you referred to did. They're simply going to say, "Who needs this stuff?" The consequence of that for a large number will be that they may well have a relapse and be back in hospital. That's going to cost the system a heck of a lot more than a reduced number of prescriptions or whatever this \$2 fee may be intended to produce.

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Mr Agostino: In regard to the issue of confidentiality, particularly in this area, because often an unfair stigma is attached to mental illness and the effects and so on, how would your facilities or you as doctors deal with the possibility of government having access to your patients' files, to having an agent of the minister have access to a file of any doctor if they feel there's cause?

Dr Deadman: In the present laws there are quite a few provisions whereby people can get access to files. We think they're more than sufficient in the present legislation without concern for Bill 26.

Mr Christopherson: Again it's an area I've had some experience in when I was on city council. I want to pick up on the confidentiality issue Dominic just touched on and then move into some other areas. It's worth stating again that this is not the first time this government has encroached into areas of privacy and that other people have raised the alarm. In fact, in Bill 7—where there were no public hearings, I would remind everyone, and that whole bill was rammed through the House with no public input—the privacy commissioner actually issued a letter to all legislators saying, "I've got some real concerns in Bill 7, the labour relations law, with regard to information that is now going to be denied people"—information working the other way.

For a government that ran on a platform of being transparent and accountable, it shows the inherent contradiction between what they say and what they do. And now buried in Bill 26 is another one of these ticking time bombs, and because of the lack of time there's just not enough focus. But you could spend a number of weeks examining that part alone in terms of what the thoughts are this government with regard to privacy of information, access to information, the transparency of government—all of which, I say again, is in contradiction to what they said they would do when they were on the campaign trail.

When you talk about the impact of the changes to Ontario drug benefit plan on the psychiatrically disabled, it speaks to the fact that this government is forcing the most vulnerable in our society to carry the biggest burden. We know that the 22% cut in social assistance rates is going to affect the psychiatric hospitals and the whole area of psychiatric services. Phyl Turner—if she's not still here, she was here earlier—can talk at great length about this.

I want to ask you if you see any hope at all on the horizon. I give the government this one opportunity. Is there anything at all the government is doing so far that gives you some kind of hope that the most vulnerable in our society are actually going to somehow be better off as a result of the actions this government's taken to date?

Dr Deadman: The problem is, I don't know how this stuff is going to work out—I don't think anybody does—and that makes it a very difficult question to answer. My feeling is that we certainly do need changes in the system, but it isn't as if this just came up this year. We've known about this for 30 years and we've been working on it for 30 years. I simply don't know how to answer your question because I can't predict how this is all going to work out. My big concern is that it's kind of loosey-goosey: "the minister may, at his discretion," "the public interest." I see all these phrases in here, but I simply don't know how to interpret them.

Mr Christopherson: That's fair. Given the track record so far, I don't have any comfort, as a representative of the Hamilton area, that the actions the government's taking are going to help people. In fact, I think they're going to hurt a whole lot of people.

Someone else, the pharmacists' association, talked about the whole idea of meds, that not taking the meds for the psychiatrically disabled is either going to put them back in the psychiatric hospital or, given the fact that there's not going to be much of a psychiatric hospital system, probably on the street as street people, or back in jail, which is the last place in the world someone who has a medical problem as opposed to a criminal problem should be. All of this is just going to exacerbate that whole cycle we know. Any thoughts on that?

Dr Deadman: Very much. I was talking to some people who work at the Hamilton-Wentworth Detention Centre and their joking comment about the fact that some of our patients had wound up in that facility was, "Oh, yes, some days we just call this place Hamilton Psychiatric Hospital, north unit."

Mr Toni Skarica (Wentworth North): I would like to comment on what Mr Christopherson said earlier about the demonstration that took place. Basically, he indicated that because of Bill 26 and the way the government is proceeding, somehow we deserve this kind of demonstration and we are to expect it in the future. I'd like to make a couple of things clear: One is that this government has always been willing to grant public hearings; the only dispute was when and how. Secondly—

Mrs Pupatello: Toni, that's not true.

Mr Skarica: Let me finish. No one has a right to interfere with these proceedings. We talked about democracy. This is not democracy.

Mr Christopherson: How would you know?

Mr Skarica: Mr Christopherson asked how I would know. I personally like Mr Christopherson, but I hated his government. You want to talk about democracy? Nobody in this party had heard of me a year ago. I didn't like what was happening, and I used the democratic process in a legitimate way and ran in the election and won. I represent the people as much and more than anybody here.

Second, what they did is technically a criminal offence. I refer you to section 175 of the Criminal Code. I'm not going to read it, but what they did is a criminal offence. All of history has shown that the end never justifies the means. When you're prepared to break laws to achieve your end, you're a society in deep trouble.

Mrs McLeod: Mr Chair, who is he charging?

Mr Skarica: I'm talking about those people that interfered with these proceedings.

Third, it's completely inconsiderate to the people who have done a lot of work and wanted to have their presentations and have now been cut short. Gentlemen, I ask you, how much work, how many hours, did you put into your presentation?

Ms Lankin: That's not fair. Let's focus on Bill 26.

Mr Skarica: No. How many hours did you put into your presentations? I'm asking the questions.

Dr Deadman: We had several people working on it. I personally put in several hours myself, and I have thought about this considerably over several months now. I wouldn't know how many hours I've put in on it if you include that sort of thing.

Mr Skarica: Many, many hours, correct?

Dr Deadman: Correct.

Mr Skarica: That demonstration has caused your presentation to be cut short, correct?

Dr Deadman: I bow to the ruling of the Chair. Yes, it is a little shorter than we had intended.

Mr Skarica: Those are my questions.

The Chair: Thank you very much, doctors. We appreciate your presence and your interest in our process.

Mrs McLeod: Mr Chair, if there is a government member who is concerned that there is not adequate time for public presentations to this committee, we would welcome a motion from the government side to extend the hearings not only today but beyond today. We have been waiting for this for weeks.

Interjections.

The Chair: We have one more group to hear from. We can either hear from them quietly, or we can go to lunch. I presume we'd like to hear from them.

Mr Agostino: Mr Chair, can I again take the opportunity to introduce a number of other briefs into the record from the shadow hearings downstairs: a brief submitted by the Hamilton-Wentworth Coalition for Social Justice, a brief submitted by the Crown Point Assembly and a brief presented by the Mental Health Rights Coalition of the Region of Hamilton-Wentworth. I would ask that those be included and circulated to the committee from the shadow hearings downstairs.

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Mrs McLeod: Mr Chairman, I understand that a motion to extend the hearings was placed earlier today and was defeated by a vote of the committee. However, I would ask for your ruling, given the interest of a member of the Conservatives to extend the hearings and that he's expressed concern about the shortening of the hearings. It would be my understanding that a member who voted against that motion could move a motion of reconsideration, so the vote could be placed again today to extend the hearings beyond today.

Mr Clement: He did not vote against the motion.

Mrs McLeod: Mr Chairman, I'm asking for your ruling, although I always love to get Mr Clement's personal opinions of what's happening around this table. I ask, Mr Chairman, given an apparent concern on the part of the government members that these hearings are being shortened, whether we could have some indication for reconsideration by the government itself.

The Chair: The member who made the comments did not vote this morning. The member's comments were directed to the fact that the presentations today had to be shortened because of our time frame. I don't think it had anything to do with extending the hearings.

Mrs McLeod: Just for clarity, it would be my understanding that all the government members who voted against the motion this morning and constitute a majority continue to believe that these hearings should end today and would not reconsider that motion?

The Chair: I would assume that was indicated by their vote this morning.

HALTON REGION COALITION FOR SOCIAL JUSTICE

The Chair: The next group is the Halton Region Coalition for Social Justice, represented by Terry Kelly, David Michor, Miriam Lockhart and Robert Heaton.

Mr Terry Kelly: Thank you. I'm representing the Halton Region Coalition for Social Justice. I'm also a spokesman for the Halton Health Coalition, which was formed in conjunction with our social justice coalition.

I want to introduce the three other panelists: the town of Halton Hills councillor, alderman for ward 2, Robert Heaton, who's a former Georgetown hospital board member and a former Halton Hills volunteer ambulance service member. Miriam Lockhart is the president of CUPE Local 778, St Peter's Hospital. That's the hospital where last night 330 workers were given their layoff notice. David Michor is the chairperson of the Hamilton-Wentworth Health Care Workers Joint Action Committee.

After the failed attempt at sneaking Bill 26 in without any public input, let alone any collective debate, it has become obvious why this undemocratic procedure was undertaken. Bill 26 is an odious and repugnant piece of legislation that has as its objective the obliteration of public services in this province.

Throughout this century the producers of wealth, the working men and women of Ontario, have struggled long and hard to build a social infrastructure that would service the needs of all the people in this province. This is the real commonsense revolution and not the pathetic machinations of the present government.

The direction this government is going in with this ominous Bill 26 is clear: streamlining the decision-making process to the exclusion of public participation and accountability, disguising tax increases as user fees, or whatever terminology is in vogue at the present. Those who can afford the services will receive them and those who cannot will once again be deceived by the Tory government that routinely says one thing and does another. One thing is certain: Using a metaphor from two decades ago, the present-day corporate bums will continue to not pay their fair share while the rest of us will be burdened with ever-increasing taxes and service fee payments.

Schedule A of this nefarious piece of legislation, the Public Sector Salary Disclosure Act, 1995, is another example of government waste. All public sector employees who earn \$100,000 a year salary and benefits for non-profit enterprises, which receive either \$1 million

or 10% of their gross revenue from provincial funds—they will be put on some kind of public wanted poster. This is as long as it is for a non-profit entity, one exception being employees who work at for-profit enterprises, such as many nursing homes. That's cool and that's the Tory way. For they are like the \$600,000-plus salaried private sector CEOs who will definitely not be exposed to public scrutiny.

Schedule F amends four acts directly related to health care: the Ministry of Health Act, the Public Hospitals Act, the Private Hospitals Act and the Independent Health Facilities Act. Schedule F is an outright assault on the Canada Health Act: (1) It gives arbitrary authority to close public hospitals, (2) it arbitrarily allows private corporations to open licensed, profit-from-pain facilities in this province, and (3) it tolerates an array of user fees, extra billing procedures and installs a two-tier health care system.

In amending the Ministry of Health Act, Bill 26 establishes the Hospital Services Restructuring Commission, whose mandate is to implement the government's agenda on hospital restructuring. There are no restrictions on the duties of this commission. The Health minister can delegate authority to the commission, which will then have the power to restructure in whatever fashion fits the minister's fancy. Judging from the actions of this government, closing a hospital or eliminating services will be based on fiscal consideration and not on the medical and health care requirements of the community.

The Hospital Services Restructuring Commission will be the hatchet the Tory government uses to chop to pieces our publicly owned health care system. These barbaric actions will be protected from any liability or damages as long as they act in good faith. With the present provincial regime's slash-and-burn record, the people of Ontario would be better off placing their faith in the devil.

This invidious Bill 26 repeals section 8 of the Ministry of Health Act. This section establishes district health councils and details their functions. The section also gives direction to the councils in regard to the first nations communities. The new section 8 makes no reference to district health councils. This leaves the restructuring commission free to cut at the dictates of the autocratic Minister of Health.

In amending the Public Hospitals Act, Bill 26 gives the Minister of Health practically dictatorial authority over every aspect of funding, operation, closure and amalgamation of our public hospitals. The bill primarily transforms democratic structures and direction of the community hospital boards. The minister has the power to overrule all hospital board decisions without any consultation. Decisions to close or amalgamate hospitals will not be made with consideration to the quality of care but will be based on financial and budgetary concerns.

The amendments to the Public Hospitals Act can regulate hospital supervisors to implement the Health minister's orders to take control of the local hospital board of directors. This ominous Bill 26 protects the entire clique—the minister, investigator, the hospital supervisors and the boards of directors—from any liability as a result of hospital restructuring. Beyond the

pale, it is outrageous that this elected élite has not thought of protecting the men, women and children of this province who will suffer as a result of the restructuring. This is a ripoff.

Sections 5 and 6 of the Public Hospitals Act gives power to the minister to fund public hospitals as defined by the regulations. These have been repealed and the new sections give the minister the freedom to decide when, how much and under what conditions the ministry will give grants, loans and/or financial assistance. The minister will have the capacity to require repayment and to reduce or terminate grants and loans. The minister will have the authority under the new section 6 to close hospitals, order hospitals amalgamated and define the services to be delivered by a hospital. The effect of these sections will be to allow the minister to amass far greater control and to be able to decide all funding matters of the hospital with no consideration to the fundamental needs of the employees, patients and the community.

The only consideration the minister has to take into account is if the action is in the public interest. In defining "public interest," section 9.1, the minister and his cabinet are not limited to but can consider matters they regard as relevant. One has to ask, why are they not limited to the quality of management and the administration of our hospitals, the quality of care and treatment of patients in the hospitals and the proper management of health care in general? The minister and the cabinet should be held accountable specifically to these principles of health care in their consultation and determination. The availability of resources, the focus of this government, claiming the lack of being the major reason for a reduction in services: They need to get their priorities straight. Make those with the wealth pay their fair share. It's not a new idea, but if implemented, it would certainly be a new and unique experience for that class.

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The lack of accountability is rife in this bill. The bill gives the minister the ability to make regulations concerning hospital subsidies, hospital foundations and the disposal and/or purchase of hospital assets. Millions of dollars are involved in these funds and assets, and when the hospitals close or merge, no accountability, no liability. Only in Tory Ontario, it seems.

In schedule F, the Private Hospitals Act is amended to give the Health minister the authority to rescind a private hospital's licence at any time and reduce or withdraw any grant, loan or other financial assistance without notice. The bill repeals the right to a hearing and appeal. The minister is protected from any liability.

The objectionable Bill 26 will no longer give preference to non-profit Canadian health care providers or to solicit proposals for new facilities from the general public. The minister can now request proposals be limited to only one or to more than one specific person. This leaves the door open for the profit-from-pain US health care corporations.

The combination of the Tory health care cuts of more than \$1.3 billion over the next three years and the minister's power to allow these primarily foreign-owned corporate giants to set up for-profit clinics will leave our children's, the sick's and seniors' health and wellbeing at

the mercy of the corporate balance sheet. This certainly will be the treacherous Tory regime's legacy.

The scurrilous Bill 26 gives the minister the authority to collect and disclose confidential medical information for the purpose of the administration of the Independent Health Facilities Act, the Health Insurance Act and the Health Care Accessibility Act. This is more in tune to Pinochet's Chile than the present day Ontario.

The obnoxious Bill 26 proposes to change the Independent Health Facilities Act to do away with our universal, accessible, non-profit, publicly administered health care system. The bill redefines terms such as "facility fees" and "independent health facility" to allow a charge or fee for any service designated by the minister. That includes any facility the minister defines through regulations. Independent health facilities will be able to serve a large proportion of health care facilities and will be allowed to charge fees to insured persons. We have extra-billing. A flash in the recent past: No to extra-billing. I'm talking about the Tories' election promises. No to extra-billing. No to user fees. No to cuts to the health care system. That's a lie, lie and more lies.

The government has put economic considerations ahead of the confidentiality of people's medical records. As noted in today's Star, some of the medical records, by the way, of people in Ontario are right now in Boston. When people's medical information has been disclosed, they are left with no redress.

Bill 26 amends the Drug Benefit Act and includes copayments and user fees as well as deductibility of \$100 per year. The minister can determine what drugs are listed or not and overrule the decision of the doctors or pharmacists as to what is appropriate medication for the patient. The patient can be required to pay the difference between the approved and prescribed drug. The user fees for prescription drugs will not reduce the need for medication. In the long term it will increase the need for more serious medical intervention.

User fees are being promoted as a form of cost cutting but are just another new revenue grab, taking away from the people who can least afford it, the irony being that those who feel the pain are single mothers on social assistance, disabled and seniors, while those who gain are the large pharmaceutical corporations free to continue to reap massive profits.

Bill 26 removes reference to "medically necessary" services, opening the door to delisting of services. The cabinet will also be free to determine what medical services are insured or not. They will have the power to determine what services are medically or therapeutically necessary without any public debate. This is just another way of introducing a two-tiered health care system. The large transnational insurance corporations are gleeful in their expectation of massive profits.

Bill 26, in amending the Health Care Accessibility Act, will open the door to hospitals charging user fees on everything from accommodation, meals, nursing services, labs and drug tests and drugs, to use of operating rooms and use of emergency room facilities. The bill allows for administration fees of up to \$150 per patient. The question has to be asked: When in need of medical services, what happens to the masses of people in this province who cannot afford these vile user fees?

Bill 26 amends the Pay Equity Act. It repeals the proxy provisions affecting the right of fair pay to an estimated 100,000 women working in low-paid jobs in nursing homes and day care facilities. This is another example of the intent of the Tory government to rip off the poor to the benefit of the wealthy private corporations.

Bill 26 amends the Freedom of Information and Protection of Privacy Act and will make it difficult for people to gain access to documents. It will also limit the access of what information is available. This bill also introduces user fees under the guise of application and appeal fees.

The next schedule is to do—I'm not going to mention it all. It's the teachers' collective negotiations act being amended, the fire act, the labour disputes etc, the Public Service Act. The bill amends these various pieces of legislation, essentially introducing compulsory arbitration and effectively removing the right to strike. Bill 26 requires arbitrators to make decisions based on the employer's ability to pay, taking into account their fiscal situation. This creates an environment where there is no incentive for the employer to negotiate in good faith. It handcuffs the arbitrator into becoming an arbitrary decision-making process that can only produce wage freezes and reductions, loss of benefits and working conditions for public service workers. This will also lead to a loss of services and revenues to the community at large.

The omnibus Bill 26 in its sheer size and the breadth of its intent has to be compared with the free trade act. As that piece of odious legislation, the free trade pact, has devastated the country in terms of job losses and sovereignty, so will the omnibus bill. Nor is it a coincidence that both pieces of legislation were and are promoted by tyrannical Tory regimes.

Bill 26 will change dramatically the intent of dozens of pieces of legislation from their present intent. It is not possible for the public to fully participate with the bill in its present form and in the short time allocated for public hearings.

This omnibus bill is not needed to achieve fiscal savings or to promote economic prosperity. What is needed is the implementation of a program of full employment and strengthening of public non-profit social services, health care, and massive increases, not cuts, to our education system.

The Chair: Thank you very much. That uses up all your time. We appreciate your interest and your presence here today and your presentation.

We are now recessed until 1 o'clock.

Ms Lankin: Could I place a question on the record before we recess? This is to the ministry and it's with respect to amendments that were tabled this morning.

I would like a fairly quick turnaround on this, if it's at all possible, because I believe I have found the amendment of all amendments which means that the government will never have to return to the Legislature of Ontario to do anything it ever wants in the future in the health care system.

In the Health Care Accessibility Act, which I think will be confirmed is a very small act which was essentially

some revisions that government at one point in history wanted to make without opening up other pieces of legislation, I have found an amendment which gives the Lieutenant Governor in Council regulation powers, I quote, "prescribing anything that must or may be prescribed under the act," which means that the Lieutenant Governor—ie, cabinet; ie, the minister—can make a regulation now to set out areas under which it can make regulations. This is incredible, unheard of.

Under the Health Care Accessibility Act, I would like the ministry to answer to me: Does the minister ever have to go back to the Legislature of Ontario to prescribe an area or a regulation under an area, any area they want, or can it all be done behind closed doors in the cabinet room with the stroke of a pen?

I believe that we've just seen the end of democracy in the health care system in Ontario.

The Chair: Thank you, Ms Lankin. We stand—

Mrs Caplan: Before you adjourn, may I comment—

The Chair: On that question?

Mrs Caplan: Yes.

The Chair: No. We're going to recess until 1 o'clock.

The committee recessed from 1221 to 1311.

The Chair: Could we just talk a little bit about the situation here, folks? First of all, is the gentleman from CUPE in the audience, the gentleman who was at the table just before lunch? The committee has asked me to allow him, some time this afternoon, to make a 10-minute presentation if he chooses to. I don't know where he is, but we'd accommodate him at any time.

The other thing, obviously it's difficult to continue with the signs up. I'd like to invite you to put the signs down, sit in the audience and listen to the presentations. We're here to listen to the people of Hamilton. We have some more to listen to and we'd like to do that. It's not a very nice environment to try to do it in with the signs. I'd like to invite you to put the signs down, have a seat and participate in the process with us.

So whenever he comes in, we'll squeeze him in between. I'd like to get started now and get him after the next one. Is that fair?

Mr Terry Kelly: Are you going to allow the other participants who are with us?

The Chair: The gentleman from CUPE who asked for 10 minutes, we'll put him in between a couple of presentations.

Mr Kelly: There were four of us here. There are three other people. They can share that time.

The Chair: They can share the 10 minutes. Do we have a deal here, folks?

Interruption.

The Chair: Okay, thank you.

MEDICAL REFORM GROUP OF ONTARIO

The Chair: The first presenter this afternoon is the Medical Reform Group of Ontario, represented by Gordon Guyatt, Murray Enkin and Ian Scott. Welcome to our committee, gentlemen. You have a half-hour of our time to use as you see fit. Questions, should you allow the opportunity for them, would begin with the New Democrats. The floor is yours.

Dr Gordon Guyatt: We appreciate the opportunity to present here. We're going to talk about four aspects of the bill: the changes proposed to the Independent Health Facilities Act, Ontario Drug Benefit Act, Prescription Drug Cost Regulation Act and the Health Insurance Act.

For those who don't know about us, briefly, the Medical Reform Group of Ontario is a group of approximately 200 physicians and medical students who have been formed around three founding principles. One is that health care is a right and that universal access to health care should not be impeded by financial barriers. Secondly, we believe that health and ill health and the determinants of ill health are not only medical but social, political and economic in nature. Finally, we think that as currently structured, the health care system is excessively hierarchical. It is as a consequence of those principles that our criticisms of the act come from.

To start with the changes proposed to the Independent Health Facilities Act, the act currently regulates facilities that provide medical care such as cataract operations, freestanding abortion clinics, endoscopy and day surgical procedures as well as some diagnostic procedures. The three important changes to the act that we see include the definition of independent health facilities broadened to whatever the minister defines; second, the less restriction on what facility fees the minister can designate be charged by independent health facilities; and third, the removal of the current recommendation that the minister gives preference to Canadian-owned, not-for-profit independent health facilities.

Clearly any charges, any facility fees are potentially an impediment to access to health care and violate the principle of universal access. We are also extremely concerned that the changes in the legislation will result in the ability of the minister to request or facilitate or to permit American health care corporations to move in and run independent health facilities.

We have seen for quite some time now the dramatic differences and consequences of the differences between Canadian and American approaches to health care delivery. In the United States we see massive barriers to access on the ability to pay and we see the suffering that results from lack of access to health care.

In the last five years there have been dramatic changes to American health care with the advent of managed care and the move for large, for-profit corporations into the administration of health care in the United States. The results of that have been twofold. From the point of view of physicians, physicians have lost an enormous amount of autonomy and there is extensive regulation of physician activities by the for-profit owners and health care managers of the managed-care corporations. More important than that, there's been a deterioration now in the quality of care in the United States not only for the individuals who previously had relatively little access to care—the poor and uninsured—but for a very large proportion of lower-middle and middle-class Americans.

The reasons are pretty obvious. If you have for-profit corporations running health care, their interests are to deliver the minimal amount of care consistent with simply getting people to pay up, and the result has been that all sorts of people are being denied aspects of care

by health care managers of these managed-care corporations. This is clearly not the direction for Canadian health care to go.

These American corporations are waiting in the wings. They see Ontario and Canada as a potential market that they would love to get into. If in fact the intent of the government was to allow these people in, it could not do a better job than to amend the legislation in the way that is proposed. This is not the direction that Canadian citizens want, and certainly the people of Ontario do not want their tax dollars going to enhance the profits of American corporations. For those reasons, the provision that preference be given to Canadian-owned, not-for-profit independent facilities should surely be left in place.

The second aspect of the bill that we would like to address is changes to the Ontario Drug Benefit Act. Bill 26 institutes a copayment or user fee for people who use the Ontario drug benefit plan. Seniors and low-income families will be required to pay a \$2 user fee, and for every individual whose income exceeds \$16,000 and families whose income exceeds \$24,000 there will be a deductible of \$100 per year. For those people, \$16,000 and \$24,000 cuts, there will be in addition the payment of the full cost of the dispensing fee, \$6.11.

1320

The first question we would like you to consider is, what will be the impact of these changes in terms of access to drugs and use of prescription drugs by the poor? When you consider that many of the people affected by this will be the very individuals who've had their welfare benefits cut by over 20%; when you consider that many individuals whom this affects are already in a position where their basic necessities of life are compromised—for instance, many of these people are getting their food from food banks; when you consider those facts, it is inevitable that even small user fees of this sort will lead people to not visit physicians because they will know that they will have difficulty paying for their prescriptions or not filling prescriptions that they get.

If there was any doubt about the logic of that, we can actually refer to prior evidence about these sorts of changes. In 1971, the Saskatchewan government introduced a user fee for physicians' services which were previously fully covered, the equivalent in today's dollars of \$6. The result of that was an 18% decrease in the use of physicians' services by low-income people. Small user fees lead poor people to not get the care they need.

In a more recent example, on June 1, 1990, Nova Scotia imposed a \$3 copayment on all seniors except for those in nursing homes and homes for the aged. We are already seeing since that a decline in the number of people using the pharmacare plan, particularly those who have to pay the user fees.

You have to accept, I think, that the poor, the beneficiaries of the Ontario drug benefit plan, will on occasion, because of these user fees, not get the drugs that are prescribed. What is going to be the impact of that? The pharmaceutical services are not discretionary items. The people for whom the drugs are prescribed are not asking for the drugs; they come from medical problems, and physicians prescribe those drugs. If they do not get the

medication that is prescribed, it is going to have obvious adverse effects on their health status.

Once again, common sense would tell us that, but there are also empirical data to substantiate it. There have been a number of American studies that have looked at the potential adverse effects on health status by the institution of limitations on drug prescribing. For instance, in one study that followed legislation in the 1980s in New Hampshire, where medicaid recipients were restricted and there was a cap of three drugs—they could not receive any more and get reimbursed for them—the result was an increase in the rates of admission to nursing homes and a sharp increase in the use of emergency mental health services and hospitalization in people affected by the cap.

This government is very appropriately interested in efficient health care and limitations of expenditures on health, while maintaining full services. A government with that interest should note that in this study the increased health utilization of mental health services amounted to 17 times the cost of whatever was saved in the drug expenditures.

The Ontario decision to require the copayments for every prescription was accompanied by a statement from the Finance minister: "We are expecting everybody in the province to pay their share and they are.... We are trying to be as fair and equitable as we can." From what we have said already, it is not fair to request people who are already on marginal incomes to pay for drugs. It is going to have adverse effects on their health status. In an appendix to our brief you will see an analysis that we have done suggesting that poor households already pay a greater proportion of their household incomes on drugs than the affluent, even before this legislation. So there is nothing, we would argue, fair about this legislation whatsoever.

Another important issue is that this opens the door for further copayments. Once you start, there is a much greater risk of gradual increases. If you are really going to want to hold it to incomes of \$16,000 and \$24,000, you will need to index that. We wonder whether consideration has been given to that, or in effect the income at which these charges will be instituted, the real income, will become lower and lower each year. But the real concern is that there is going to be further erosion in access to drug services by the poor beneficiaries of the drug benefit plan.

In summary, the people who are now going to be paying these copayments, the poor, already have worst health status. They are already people who are extremely marginal. They are people relying on food banks for their food. It is clear that there is going to be decreased utilization of needed drugs prescribed by physicians for conditions, and when these people are not able to get that, their health status is going to deteriorate further. Anything that you propose that you are going to save, the evidence suggests that even if you discount the fact of the suffering associated with worst health status, there's going to be increased use of health services that is going to offset any possible savings.

The third issue we would like to address is the changes to the prescription drug act. Drug prices for Ontarians not covered by the Ontario drug benefit plan will, according

to the legislation, be deregulated. Until now, drug prices in the Ontario Drug Benefit Formulary have been applied to everyone. With the proposed changes, Ontario will be the only province in Canada not regulating drug prices, and indeed, 60% of all prescription products will be affected by this legislation.

The Health minister has indicated, and again I quote, that consumers are going to have to "put pressure directly on manufacturers.... That's how markets work." "People don't buy certain cars when they get too expensive—they go and buy another car. For the vast majority of drugs, there is some choice on the market."

I'm afraid that even as a not very sophisticated student of health economics, that kind of perspective really is quite naïve. It is a fundamental and basic tenet of health economics that the health system does not operate on a market the way other markets operate. That would be the first sentence of any health economics text that you picked up.

When patients come to a physician and receive a medication, and most of us can attest to this in our roles as patients, we do not have the education to know what the alternatives are, and the questions are not asked: "Doctor, is there any cheaper medication that you can give me?" rather than the one you have been prescribed. It simply does not happen. Not only that, but as a medical educator, for better or worse, we can attest to the fact that the culture of physician training is not to put a high value on the cost of the medications, and cost is not the basis on which drugs are prescribed. The market economics that the minister suggests might apply here simply do not play out that way in the health care system.

The pharmaceutical industry is lobbying in favour of these changes. Let us assume that the truth was that drug prices would get lower as a result of this legislation and pharmaceutical company profits would as a result go down. Do you honestly believe that under those circumstances the industry would be lobbying for this legislation? They are smart people, as you well know. They are lobbying for this legislation because they know perfectly well, as other witnesses for this committee have told you, that drug prices are going to go up and pharmaceutical industry profits are going to increase. That is why they are lobbying for this legislation. The beneficiaries of these changes are going to be the profits to the pharmaceutical industry; the people who are going to suffer and be penalized are the people of Ontario.

1330

The next issue we would like to address is changes to the Health Insurance Act. We are not going to focus on all changes to the Health Insurance Act, but rather would just like to focus on a single aspect of those changes, which is the restriction of billing numbers to new physicians and the stipulation that specialist physicians will get billing numbers only if they can obtain hospital privileges. The result of this is that primary care physicians will be restricted in the areas that they can set up practice and similar restrictions are liable to be in place for consultants as well.

We understand that the government, in offering these changes, is attempting to address a very real problem in health care utilization and service in Ontario, which is

that there are underserved areas in particularly small communities and rural communities, and people do not have the physicians they need in the same way as urban communities. However, the proposed solution targets a particularly vulnerable group, and we see this unfortunate tendency of the government trying to solve fiscal problems by raising policies that seem repeatedly to be targeting the most vulnerable and the people least able to defend themselves. This seems to be another example.

While this is unfair to newly graduated physicians, it is not the consequences to physicians that we would like to point out and emphasize, but rather the consequences of these changes for the public. To consider those changes, you have to look at what are the differences between these newly graduated physicians and people who have been in practice for many years.

One of the differences, aside from the fact that they're obviously younger, is in the demographic background of medical school graduates in comparison to people who have been in practice for many years. There are many more women graduating from medical schools. There are many more people of colour graduating from medical schools. In other words, the new graduates of medical schools have a demographic makeup much closer to the population they serve than do doctors who have been in practice for many years. The result is likely to be an increased sensitivity to the needs of those populations and a greater ability to meet their special needs.

As a medical educator, I can also speak to the differences in medical training that newly graduated physicians underwent in their medical training in comparison to the traditional approaches of years past.

The first point is that unfortunately, to an extent, medical practice physicians tend to get stuck in the practice that they were trained in during their medical school and residency training. Clearly, more up-to-date practice is going to be a part of the way newly graduated physicians manage their patients.

Second, there is a much greater stress in trying to deal with this particular problem of getting stuck in your practice on evaluating new evidence. Newly graduated physicians are taught to a much greater extent than their older colleagues to make a critical assessment of the evidence and particularly a focus on assessing new evidence.

Another change in medical training has been one that I'm sure would appeal to the government in that we are beginning to stress aspects of the efficiency of health care in terms of our medical care decisions, which tends not to have been done in the past.

Finally, we put a greater stress on ethical issues and on patient autonomy than has been the case in the past.

These clearly are positive changes, and what the proposed legislation will do is restrict the citizens of a large portion of Ontario from the benefits of having these newly graduated physicians who have all these positive and to an extent innovative aspects of practice that will be part of how they deliver care. So to that extent it is the people of Ontario who will suffer from these restrictions. There is also a considerable risk that in the areas to which you're not going to allow the new physicians to come, you're going to see closed practices, with potential

increases in inefficient use of health care due to use of emergency rooms and walk-in clinics.

We could sympathize to some extent with the government were this the only solution to the problem of maldistribution of physicians. The problem is that it is not the only solution. There are a variety of solutions, better solutions, available. The one that we would like to emphasize is the change in the method of funding physicians in the health care system.

There are many problems with the current fee-for-service system, and indeed one of the major problems is that it allows the concentration of physicians in urban areas, because even though you have a relatively low ratio of patients to physicians, physicians can simply deliver more intense care, deliver more services, and as a result maintain their incomes because of the fee-for-service system by this increased delivery of services.

A capitation system, in which physicians are paid on a per capita basis for their patients irrespective of the volume of service they deliver to those patients, would change the dynamic completely. It would end the incentive to deliver excessive and unnecessary care and instead substitute an incentive to deliver care most efficiently. It would mean that physicians in urban areas could not simply increase their rate of services and billing and as a result make up for a low patient-to-physician ratio by that mechanism. It would thus force physicians who wanted to maintain their incomes into the areas where they are underserved. We recognize that it would not, in and of itself, solve the problem completely and that appropriate incentives and supports would still be necessary in addition, but it would go a long way to solving that problem.

We would suggest then that the government would be much better off making some fundamental changes in the structure of physician reimbursement, which would have a number of positive effects, including a fair way of addressing the maldistribution of physicians rather than once again targeting a particularly vulnerable group to the detriment both of newly graduated physicians and the people of Ontario.

I'd like to conclude by saying that the four aspects of the bill that we have highlighted as particular problems are not the only ones that the Medical Reform Group is troubled by. You have heard criticisms from a wide variety of other groups around various aspects of the bill where the Medical Reform Group has concerns, but we have identified and highlighted four areas that we think are particularly problematic.

Given that these very fundamental problems which threaten both universal, equally accessible care for Ontario citizens and target the poor and disadvantaged will lead to a group with already poor health status having their health status deteriorate further, all the aspects of the bill that we have identified should be seriously reconsidered, restructured, or simply eliminated.

The Chair: Thank you. We just have time for a one-minute statement by each party.

1340

Ms Lankin: I'll give you one minute to you just on user fees. The government says that every other province has them in drug programs, so it shouldn't be a problem

here. Are you aware of any studies of the effect of it in other provinces?

Dr Guyatt: It's very difficult to do these before-after studies. To do a study properly, you would at the very least require before and after. However, I did mention the Nova Scotia experience, which is the one we know of where we do have such before-after data. It was only instituted in 1990, but the preliminary evidence already suggests a decrease in utilization of needed pharmaceutical services by people in Nova Scotia who are subject to those user fees.

Mrs Helen Johns (Huron): Thank you very much for your presentation. There was some excellent information in there that I intend to look at again. I wanted to talk about the structure of physician reimbursement. That's one of my pet peeves because I come from rural Ontario and we've toured the north. You spoke out against fee for service, you spoke about capitation; you didn't speak about differentiated fees. Can you comment on the OMA and its vision about how the structure of the physician reimbursement should be or are you speaking for yourself in this area?

Dr Guyatt: Well, clearly there have been efforts for about 20 years to address the maldistribution of physicians which have been far from completely successful. We believe that neither Band-Aid solutions nor solutions that unfairly target newly graduated physicians are appropriate. We believe that if you really want to address some of the fundamental problems, you need wide-ranging solutions that address the whole structure of reimbursement, and capitation would be a very positive way to do that.

Mrs Caplan: Thank you for an excellent presentation. I agree with everything that is here. I hope the government will listen to you. I think I've worked with all of you over the course of the years that I was Minister of Health. Your advice was always excellent. You've proposed solutions. You've identified the problems. I believe that Bill 26 is not only going to be bad for health care but for the health of the province. Do you want to say anything further about that?

Dr Guyatt: I don't know. Ian, Murray, anything?

Mrs Caplan: You've always provided such good advice. Thank you for coming. This is the end of the hearings. They intend to pass this bill on January 29. I'm hoping that they will delay this bill so that it can be withdrawn and have sections brought in that reflect the kinds of alternatives that you have proposed.

Dr Guyatt: I guess the final thing, then, is to say that there really are terribly serious problems with this. The adverse effects on health are going to be real. The dangers to universal care are real. Please reconsider these proposals.

The Chair: Thank you, doctors. Ms Lankin.

Ms Lankin: I'd like to table a request to legislative research. On page 7 of the presenters' documentation there is a list of references to research papers and reports dealing with the effect of user fees and copayments on drug use in seniors' populations and others under drug user programs. I would appreciate it if legislative research could provide us with an overview of the content and findings of this list of studies if possible.

HALTON REGION COALITION FOR SOCIAL JUSTICE

The Chair: There were four people sitting at the presenters' table at lunch when I recessed the meeting. The committee has agreed to let three of those then share a final 10 minutes. Would they come forward now.

Mr Agostino: Mr Chair, could I just continue to submit to the committee copies of briefs that have been submitted to the shadow hearings this morning? I have one here from the CUPE, Ontario division, women's committee, Local 167; the Hamilton District CUPE Council; and one from Allan Boudreau, executive director of Poverty Watch. I'd like to present these to the committee on behalf of the shadow hearings that are happening one floor below us.

The Chair: Okay, thank you. Just briefly, before you start, this morning was long. My apologies. You can share 10 minutes however you see fit.

Mr Terry Kelly: I just want to say to the Chairman that one of the presenters, Miriam Lockhart, who was from the St Peter's Hospital workers—that's the local where they laid off 230 workers last night—is back at the hospital, having to take care of some issues concerning that. In her place will be Joan Webb of CUPE 778, which is also from the St Peter's Hospital workers, and she'll participate in the presentation. I'll let David Michor, from the Hamilton-Wentworth Health Care Workers Joint Action Committee, take over.

Mr David Michor: I'm the acting chair for CUPE Hamilton-Wentworth health care workers. We represent approximately 3,700 health care workers in Hamilton-Wentworth. Only by the graces of the coalition for social justice have we been provided an opportunity to make presentation here.

I have to apologize for the anger that I expressed prior to this, but this is just an accumulation of a number of events that through the action of the government of the province we are constantly being ignored and that our positions are not being heard. We had applied for standing to this board, and upon review of those who have been provided standing, it becomes extremely obvious that there is not one group representing workers within the health care sector of Hamilton-Wentworth. This is the issue that we are addressing today. I find it absolutely appalling that we were not provided proper standing.

Obviously I'm not going to have time to properly review our documents. Two of them have been submitted and I understand both have been circulated. The reason why I have brought forth one of the sisters from St Peter's Hospital is to show and make a demonstration in front of this board some of the examples of what we are going to be experiencing right across the province in reductions within health care service.

St Peter's Hospital has committed itself to a reduction of 65 full-time-equivalence positions within that facility, and every single position reflects those people who provide direct patient care. The only reason that this is being done is because of the reductions of the provincial government, and their actions clearly reflect those of Bill 26. They are taking actions prior to this legislation provided. They are violating the terms of the collective

agreement and they are exercising what they believe are going to be their rights, beginning at the end of the month, February 1.

This is quite obscene. The contents of this bill are definitely going to be undermining the labour relationship we have had on an ongoing basis with health care within this system. The district health council was here earlier. They spoke of their plan for the future of health care in Hamilton-Wentworth. That clearly also reflects the impacts of Bill 26. They have and they are proposing a vision of one superboard to monitor all health care in Hamilton-Wentworth. It appears to us that these people are intent on monitoring and controlling every aspect of health care, not only those within the hospitals, but those within every other sector within the health care facilities.

Again, this group has claimed that they have addressed their concerns and brought forth their recommendations to the stakeholders of health care in Hamilton-Wentworth. It is only through our forcing our way into these positions and into these meetings that we have been provided any representation at all. We have been absolutely denied a voice in any of these hearings. We have sent letters to the boards of directors at the hospitals of Hamilton-Wentworth. They are refusing our standing in front of the boards to discuss issues such as mergers, collaborations. They are summarily dismissing us as being an equal partner and a reasonable stakeholder in this process.

It is our belief that these people are operating on the premise of what they believe Bill 26 is going to provide them. This is absolutely obscene and is a gross injustice to the people of Ontario. Not only do I request that you people overturn this bill, but I strongly support the opportunity to extend these hearings and further investigation into these so that people such as ourselves who represent these workers have an opportunity to make proper representation in front of your group.

I pretty much ate up most of our time, so I guess I can pass it back, and if you want to close up with some further comments; I see we have another individual here and I don't want to hog the entire 10 minutes.

Mr Kelly: I would just like to add, especially just with what we've heard today in relation to the fact of the closures at St Peter's Hospital in Burlington, where 230 workers have lost their job, that issue concerns us. Presently, right now, there's a waiting list of 457 on the chronic care waiting list in Halton region. There have been announcements last month that St Joseph's Hospital in Burlington will close 50 beds, and there are another 35 beds to be closed. That's to add on to the 456.

1350

We have Martindale House, which is part of Allendale in Milton, where 100 beds are closing. There is talk of privatizing it, but there's been nothing confirmed with that. But those beds are gone. They're history. That's added on to the 456. Now across the road here in Hamilton, we've got 230 workers going, and I'm assuming that's primarily a chronic care facility. I'm assuming that is going to be adding on to the list quite a considerable number.

So what is happening? What we would like to know is, and in this bill, what are you going to do with all of these

people? These people need facilities. People within the community, the families, are not capable of providing that home care, proper home care. They don't have that expertise.

On top of that, in Sheridan, so that they can take some grant money from Disney, they're closing down 10 programs, including the nursing hospital in Sheridan. We don't have to wait until after the omnibus bill. This government is already trampling on the elderly here in this province. This is a very serious situation. We have to start dealing with this, and this bill here does nothing to do that. It just exacerbates the situation.

Mr Robert Heaton: I'll finish up. I'm from north Halton. In our area of Milton and Georgetown, the hospitals are there as a result of the residents 35 years ago through local initiatives. It was for economic development, to move employers there. If we lose the hospitals, we're going to be scared that we won't get any economic development in the future.

We're supposed to be part of the GTA. I'll give you a comparison. Bolton, which is in Peel region in Caledon, they don't have a hospital. They have to go to Orangeville, half an hour to an hour—in this weather, who knows, when the roads are icy—and/or Etobicoke. They made a big mistake years ago. Our people were smart. They have a hospital. We're really nervous that this legislation might take it away from us. That's just going to shut us down. If we're going to take the GTA growth, we have to have a hospital. This legislation's making us really nervous.

Our mental health patients come here to Hamilton, to St Joe's. I used to be an ambulance attendant at night. I know; I've done it. I've also gone to 999 Queen Street, now 1001 Queen Street in Toronto. I've also had to deliver those patients. When those ambulances are out of our area, delivering those patients to the out-of-service areas, they're not at home picking up people; they're not available. They have to come from Brampton, from Guelph, to pick up our residents to take them to Peel or Toronto or Hamilton or wherever else.

So we're really worried about our accessible health services and we're really worried about the legislation in Bill 26. Our seniors are worried too because of these beds that are at risk. These seniors right now, with no nursing beds available and the GTA growth coming—it's causing them a lot of concern. That's why I came down to support some of these other groups today. Thank you.

The Chair: Thank you very much. We appreciate your comments, and again, apologies for this morning.

Mr Heaton: Are there any questions?

The Chair: Ten minutes is what the committee agreed and which was left over from this morning. We've used up the 10 minutes.

Mr Heaton: Great. Thank you.

Mr Agostino: Mr Chairman, can I read, while we have the time here to get set up, other briefs that have been presented to the shadow hearings, one from Hamilton and one from the Niagara francophone community health centre; and one from John Asling, communications officer of the United Church of Canada, Hamilton Conference. I'd like to add these into the record, given to this committee from the shadow hearings downstairs.

HAMILTON ACADEMY OF MEDICINE EVA GEDE

The Chair: The next presenter is the Hamilton Academy of Medicine, represented by Kari Smedstad. Welcome to our committee.

Dr Kari Smedstad: Thank you very much for allowing us to come and speak at these hearings. It's very clear, I think, that it is necessary to have public hearings, seeing how many people have been interested, and we're grateful we got on the list. With me is Dr Walter Owsianik, the vice-president of the academy. I'm an associate professor of anaesthesia at McMaster University and this year I'm president of the Academy of Medicine.

I represent today 825 doctors in this city. These are doctors who are specialists, general practitioners, academic, in hospital and out of hospital; all kinds of doctors are members of the academy of medicine. We are essentially small business people, and as such we understand the need for fiscal restraint in Ontario. We have been very concerned about the deficit, in Canada and in Ontario, and we want to work with the government to help solve some of these problems.

We also believe, I think, that there is enough money in the health care system. We spend a third of our budget on health care. That is more than many other countries do that have similar or equal type of equal-access health care, and I'm not talking about the United States; I'm talking about other countries. They do exist, whether it's universality, and there's less money being spent. We really think the answer to the current crisis in health care is better management of the existing structures and funds, not throwing more money at it.

You're in Hamilton today, and I'd like to point out some of the unique features of the health care system in Hamilton, because Hamilton, as I'm sure you do know, is well known not only in Canada but around the world for its health care delivery. In this city the health care workers of all kinds, all health care professionals, have worked together for over 25 years trying to devise a regionalized approach to health care that recognizes the strengths of the different institutions, agencies and providers.

You should be aware that there is little duplication of services in Hamilton, but we are aware we can still do better. Some of the recent moves to merge the two hospital boards and to continue collaboration between all the hospitals will, I think, make it easier to provide excellent care for less money. Two of the boards that merged have two sites, so there are four hospitals turned into one, and then the other big hospital, of the acute care variety, is part of the collaboration. We also collaborated with the two other hospitals that are not acute care, but chronic care. So there is a lot of cooperation here.

Through McMaster University and through the clinical services here we have centres of excellence in clinical programs, and these recognize that in-hospital care of the patient is only really a small part of what the patient needs. There are strong links between the hospitals and the community health care agencies, and we believe this will continue to improve now that we have a health action task force, which is a division of the district health

council, working together with all the health care providers in Hamilton to try and improve the system.

You should also be aware that the doctors here continue to serve a large population outside the city of 1.8 million people. We're delivering tertiary care specialist services here to central west Ontario because we are part of the faculty of health sciences at McMaster University and of the medical school. Hamilton hospitals are world-renowned teaching hospitals. As a result of that, the citizens in this community receive world-class health care. There are services available here that are not available anywhere else, and I believe we, the health care workers, manage that system with care, compassion and fiscal responsibility, and with the will and the knowledge to improve it further without increasing costs. At least we did that until the spectre of Bill 26 came along.

It has had a profound effect on us. We're frightened as physicians, and we're profoundly disappointed in this bill. We really do wonder why any government could introduce such legislation in the name of savings and restructuring without realizing—or maybe they did realize—but at least without acknowledging that it also will dismantle and destroy many of the safeguards built into our health care system.

I'd like to emphasize again that the doctors in Hamilton are frightened, and there are those who have lived in other regimes under totalitarianism who use that word to describe what they see in this bill. Many of us regard the implications of this bill as being undemocratic. And why is that? It's because the bill contains clauses that remove basic constitutional rights such as the right to confidentiality of private medical information. I know you've heard this many times, but we'd like to emphasize that this is something that cannot be allowed to go through.

1400

This bill also denies doctors the right to any legal action or any due process if their livelihood is taken away.

Doctors have what's called privileges in hospitals. Most of us are not employed by the hospital. I am employed by a university, but most doctors work in the hospitals with a kind of licence to do their craft there, which is called privilege. This is granted not because we'd like to have everybody working here, but because there is a need. Our hospitals have a resource plan. People are granted licences, granted privileges, because they are needed. We don't have a hundred surgeons working at Chedoke-McMaster, we have seven or eight, because that's all we need, and so on. So there is a process put in place for doctors' privileges to be granted, and if they're taken away now, you can at least object. You can say, "Well, how come? I haven't been found incompetent," which is a ground for taking your privileges away. You have legal grounds to at least question. Under this bill, that right, due process, is taken away. This is one of the reasons we think it's undemocratic.

This bill allows government officials the right to enter offices to seize records and to make judgements on the necessity of tests and treatments that patients receive. Again, we find that incomprehensible. Specifically, we are very worried because the bill gives the ministry

complete immunity from any legal challenges to actions they may take, no matter how arbitrary or destructive these actions might be. That is undemocratic and that is totalitarian.

We think that this ministry does not need the powers it vests in itself by this bill because it would be impossible for the ministry to practise medicine.

We recognize that the ministry must save money and that health care is costly. But the need for health care does not go away when hospitals close, and we've heard that here this morning from other people. The need for health care does not go away if doctors are denied licences. By removing the providers, the patients will be denied care or the system will be overburdened and stretched somewhere else. So we think as doctors in this city that the answer lies in joint management, and we want to and are willing to work with the ministry in managing the system. I'll tell you that Hamilton is living proof that health care workers can do that successfully.

There are other problems to us working with the government, because the bill's schedule I voids any of the existing agreements with the Ontario Medical Association. The OMA has worked with government for decades developing health care policies in this province. Frances Lankin, who's here, and Elinor Caplan, who just left, know this because they worked with the OMA on health care policies in their terms as Health minister. The OMA is not just a doctors' union. In fact, the OMA never functioned as a union until perhaps a little bit in the last three or four years. But it has never really been a union.

There are many instances I'd like to bring to your attention, but I think one of the better ones is that of the antenatal record. Now, many of you have probably carried this thing around in your purses, because this is the document that all doctors in this province use to record the progress of pregnancy. It gives information to the hospitals on the health status of all the mothers-to-be in Ontario. It was developed by the OMA, by the expertise that exists there. The printing and distribution of the form was financed by the ministry. This particular document is recognized across Canada as a model in documentation for safe birth. There are other examples, such as maternal transport guidelines for high-risk pregnancy, again developed by the OMA, working with the ministry to finance transportation.

So without cooperation between the body that has the expertise to set standards and guide practice and the government that administers and finances the health care, the recipient of that health care, which is the patient, will ultimately lose out. You've heard that from others.

The OMA, I believe, also negotiated a reasonable economic solution to the fiscal crisis in the spirit of fairness both to the budget and to the doctors. You should be aware, and I'm sure you know, that the doctors of this province agreed to cap their incomes. They saw their pay reduced by a 12% to 15% clawback annually for the last three years for those who are on fee-for-service. Those of us who earn salaries for services have had our salaries frozen for the last four years. The OMA has proposed several mechanisms for sustaining that restraint, but the government has vested in itself powers

to break all these agreements, and this frightens us. It scares us even more, though, that the bill proposes powers to allow the government inspectors to manage the individual patient's care.

I work in an academic environment, and we are very aware of the difficulties in setting appropriate standards for cost-effective medical care which improve outcome. These are some of the things Dr Guyatt spoke about, and he works with this as well.

The universities, the specialist colleges and the clinical departments struggle with this on a daily basis and we all know that in any individual case you may not be able to fit a particular patient into a guideline because individuals differ. Sir William Osler, who spent some of his school days in Dundas, Ontario, and then became probably the father of scientific clinical medicine in the western world, said that it is as important to know which patient has the disease as to know which disease the patient has. Gordon Guyatt spoke about that when he talked about the determinants of health being social as well as pathological.

You should know that there are 10,000 new medical articles being published every single week, and some of the guidelines that come out are out of date before they are published. Now, that doesn't mean that we shouldn't use guidelines. We definitely should develop guidelines and we should work within them, knowing that they will fit groups but not necessarily individuals. So how can the ministry then hope to decide what is medically necessary treatment in a given case?

The purpose of schedule H, sections 30 to 33, is to try to catch those very few physicians who do inappropriate things, who bill for things they haven't done, who are the bad apples in the barrel. There are some, but they are few and far between, and there are already very real powers in place to deal with this through the review mechanism of our regulating body, the College of Physicians and Surgeons of Ontario. All the doctors in this province respect this body, and our practices can be and are inspected at random. We think the government should allow the CPSO to continue this work. I can tell you that most of us would rather be up in a court of law than be hauled up before the college for a disciplinary hearing, where you actually are guilty until proven innocent rather than the other way around. What is more, we actually then pay for the disciplinary hearing, not the taxpayer, if it's done by the college. We all pay into having ourselves disciplined.

You've heard about the restrictions on licensing. This bill allows the ministry to restrict all the licences of all the new doctors and specialists who start working in Ontario in order to try to fill some 200 positions in the north. Well, let me tell you, we do not need conscripts to the army of northern doctors. What we do need and what we have proposed was an incentive plan to not only send the doctors to the north, but keep them there.

I tell you, it is not money that is at issue here; it is lack of support for northern doctors. Particularly the young doctor in the north feels isolated. There are no colleagues you can call upon down the corridor to come and help you with a case: "Come and see this patient. I'm not quite sure what's going on." There's no one to discuss things with, no one to share the responsibility

with, there's no relief for nights and weekends and holidays. Doctors who move to these areas burn out, which is the modern term for it. I know about this. I didn't know about the term "burnout"; they hadn't invented it when I was there. But I worked in the Arctic for two years. I worked in northern Ontario for another two years. I know what I'm talking about.

In those communities we don't need one or two doctors that we can send up there. We need community-based group health care with many different kinds of health care professional workers, and there should be access to relief, to information systems, to support systems. It will be easier now with modern technologies to get information systems, but you still need someone to take over for you when you're too tired. You still need on-call systems. You need group practices.

It's not just in the north. I have a friend who is a general practitioner in Caledonia who's been trying to get a colleague to join her for the last five or six years. This bill, which does not designate Caledonia as an underserved area, is going to prevent that altogether. So patients there will not get doctors, and doctors there will not get relief either. You're going to have more and more of these burned-out doctors all over the province.

1410

I've been a doctor for an awful long time now. I have worked in England, Australia and North America. I've practised in isolated northern communities, islands in the North Sea, Moose Factory, I've worked with the Flying Doctors service in Australia, and I've worked in world-class university centres, both here and in Europe.

With this experience and background, let me tell you that I firmly believe that Ontario's and Canada's doctors are the best in the world. Here, I will say without a shadow of a doubt, there is a uniformly high ethical standard in the medical profession. Gordon Guyatt told you a little while ago about the new curriculum in the medical schools and how all these things are now built into it. But I would also like to stress that the doctors who are already here, who are not necessarily new, also have this standard.

Ontarians have doctors with the best training anywhere, and that's the reason the Ontario family doctors get one or two job offers every single week from the USA. They don't want dumb doctors down there, they want the best, so they ask Ontarians to come. Your doctors here are compassionate and caring. We believe we practise responsible medicine. But it's hard to practise responsible medicine and be compassionate and caring when you're scared, demoralized, depressed and fearful of the future, and that's what's happening to the doctors in Hamilton as a result of Bill 26.

We lost 19 of our members to the United States in the last year, and this week I learned of two more Hamilton family doctors who are leaving. Please reconsider the draconian powers the ministry vests in itself by Bill 26 before you destroy the morale of those of us who are choosing to stay here, because we cannot practise responsible medicine under the provisions of Bill 26.

We really do want to work with the ministry. We want to help improve the system and we want to try to contain costs. We are looking for a spirit of cooperation between

us and the government, one that restores the confidentiality of patients and the confidence we have in the system and the confidence the ministry has in us, and one that protects the public and the practitioners alike. Bill 26, I'm afraid to say, prevents us from doing that, and it will be the public that bears the consequences. I thank you for your time.

Mrs Ecker: Thank you very much, both of you, for coming here. I'm very familiar with many of the representatives of medicine from Hamilton and am familiar with the excellent work done in this community and this area. I also grew up listening to many quotes about Sir William Osler, who was one of our great family physicians before they even coined the term. Thank you very much for coming.

I think you make an excellent point that the answer lies in joint management of the system. One of the things that has certainly distressed me over the years is that every government seems to have its period of non-cooperation with the medical profession. We had extra billing and the strike under the Liberals. We had the social contract and consent and block fees with the NDP. It would appear that we now have Bill 26.

One of the interesting things was that the previous government and the OMA attempted to do a joint management agreement to try to solve many problems in the system that were not unique to any administration and still plague us, from lack of distribution of physicians to many other problems.

Would you care to comment a little on what hasn't worked in the past with agreements like that and what further advice you would have for in the future, as we all try to head to a goal that I would say we do support?

Dr Smedstad: I speak on behalf of the Academy of Medicine, not necessarily on behalf of the OMA, but the two are interlinked in that we are a branch society of the Ontario Medical Association.

One of the things that has not worked in the past is coercion, on any side. You cannot force people to do one thing or another. You need to have choice, and the Ontario Medical Association has championed for choice and also for alternative ways of dealing with things; that is not something that only the government says. If we are to work together, these things have to be taken into account.

The College of Family Physicians is talking about primary care reform; so is the Ontario Medical Association now. Those of us who work for universities are in favour of alternative forms of payment. So are many the physicians, both in primary care and specialists. If you're going to discuss anything at all, all these things have to be available for discussion and there has to be respect on both sides. Sometimes things haven't worked so well because there has been a lack of respect from one side or the other, and I'd like to see that go.

Mrs Caplan: Our leader, Mrs McLeod, is going to ask the questions. I would just like to compliment you on an excellent brief and say what an enjoyable evening I had the other night. I enjoy that kind of healthy debate.

Mrs McLeod: I want to begin with a compliment too. It may seem unusual for a group of physicians in Hamilton to be acknowledging the problem of recruitment

of physicians in northern Ontario, but I think one of the reasons it's appropriate is because McMaster was the originator of the northern Ontario medical program which has become such a very positive, proven model for enhancing recruitment as well as retention in northern Ontario. I wanted to begin with that, because I've been frustrated over the course of hearings by the government's insistence that we need coercive models because nobody's been able to find any constructive ways of resolving the issues. I think there are constructive models, and the challenge is to build on those in a more comprehensive way.

Dr Smedstad: One of the ways to try is to give incentives to students from the north to come down to the big centres, get educated, and then go back. People want to live in the north if they're familiar with the north, but you can't just move someone up who's never been there. I went to the Arctic totally naïve and I was scared out of my wits many a time. It is a very difficult situation.

Mrs McLeod: You comment on the outflux of physicians already, and just in the last little while we are seeing more people leaving northern Ontario as well. The problem with Bill 26 is that it's already creating a kind of environment which is encouraging people to leave, not stay. What has to change besides the coercive aspects of this bill?

Dr Smedstad: There was an article published this week in the Canadian Medical Association Journal on the determinants that made doctors leave, and money wasn't really the one. It was the "push factors," as they called it, of government control and regulation, knowing full well that there are lots of regulations in the United States as well. But it's a question of uncertainty here now, and the things that make you stay are things like family being close, the living conditions, the climate you're in.

Incentives—not necessarily monetary incentives, but others. Coercion is not going to work. It's going to send a few people up there for a year or two and then off they go again. Having been in the Arctic for four years, it's the sort of thing you're glad you've done but you never want to do again, unless there's some real reason to stay there, you come from there or you're familiar with the situation and like it. You've got to have incentives.

Ms Lankin: Thank you very much. I truly appreciate your presentation. I want to concur with some of the remarks you made right at the beginning when you said: "We believe there is enough money in the health care system. The answer to the current crisis is better management of existing structures and funds." You will remember that when I was Minister of Health, those are words I said as well. One of the frustrations I've had about the government's legislation and comments of the government members on the committee is the suggestion that nothing has happened. A great deal has happened over the last number of years and people are engaged in restructuring of the health care system, and there's a much better acceptance of that basic principle you set out than there was in the past.

You indicated a number of concerns specifically with the bill, and said that doctors in Hamilton are frightened because the bill contains clauses that remove basic constitutional rights around confidentiality of private

medical information. Amendments tabled today go some way to address that—and I'll be honest and say I haven't been able to understand them all yet—but I think they fall short. That's an issue that's still going to be there. The bill denies doctors the right to legal action if their livelihood is taken away. They didn't fix that; that's still in the bill. The bill allows government officials the right to enter offices, seize records—they've done away with the ministry inspectors and it's back to the college, so that's good—and make judgements on the necessity of tests and treatment patients receive. The ministry can still do that; they didn't fix that. The bill gives the ministry complete immunity from legal challenges, no matter how arbitrary or destructive the actions. The bill still does that.

1420

A whole lot of what you said you have a problem with has not been fixed. The government has tabled its package of amendments to the bill now. We're voting on clause-by-clause next week. What are you going to say to them? There they are. They're not answering your concerns.

Dr Smedstad: It is very frightening. I have a colleague here, Dr Eva Gede, who does not represent the academy; she represents herself. As a physician in Hamilton, I wonder, Eva, if you would like to make an answer to Frances Lankin's question.

Dr Eva Gede: I make these comments on my own behalf. I would like to say that the haste in which this government is trying to pass the bill, the broken promises so it gives the appearance of lies and deceit, the apparent grab for dictatorial powers, the abrogation of democratic rights, the invasion of privacy, the accusation of fraud and being held guilty and not given the chance to prove innocence, and decisions made by bureaucrats who don't know what they are making decisions about—these are reminiscent of the Stalinist terror regime under which I had the misfortune to grow up. You know what happens economically to a regime like that, that's run by ignorant bureaucrats: It fails.

As regards health care, the top bureaucrats and the rich and the wealthy get the best that anybody has to offer, and for the rest of us, like here in Ontario, what kind of health care will we get with intimidated, overcontrolled and demoralized doctors? It'll be health care Soviet Russia style. It'll be health care à la Romania.

The Chair: Thank you, doctors. We appreciate your presentation here today.

Mrs McLeod: Mr Chairman, you'll recall that yesterday I undertook to transcribe and therefore be able to table a presentation on behalf of a Dr Alison MacTavish, a family doctor in Niagara Falls who had made two efforts to be present to the committee and did want to have her concerns about the outflux of family physicians from the region known. I therefore table that brief with you today.

Mr Agostino: Mr Chair, I want to table with the committee a form that is now being used by physicians in our community asking for preauthorization from the ministry whenever they have to carry out a procedure, and that includes X-rays, blood tests, cardiograms, surgery, hospital admissions and health services. These forms are being sent to the ministry on a daily basis on

behalf of patients. Dr Levy here, who has submitted this, does this every single time he has a patient he has to deal with, in order to comply with the intent of Bill 26, and that's preauthorization by the ministry. I want to table it for the committee. The forms you see here will probably become standard forms across Ontario for all doctors if this bill goes through, and they are very much like the American style of forms that are used.

OAKVILLE-TRAFALGAR MEMORIAL HOSPITAL

The Chair: Our next presenter is the Oakville-Trafalgar Memorial Hospital, represented by John Oliver, the president and chief executive officer, and Dr Lorne Martin, the chief of staff.

Mr John Oliver: Thank you very much. On behalf of the board of governors, doctors and staff of Oakville-Trafalgar Memorial Hospital, I would like to extend our appreciation to you, Mr Chairman, and the members of the committee for allowing us the opportunity to appear today to present our views on Bill 26. As you indicated, my name is John Oliver. I'm the president and chief executive officer of Oakville-Trafalgar Memorial Hospital, and with me today is Dr Lorne Martin, chief of staff.

We were notified of our presentation late yesterday, so we apologize for not having material to circulate. That will be available Monday morning. If I could characterize the thrust of our presentation, it's to give you a feel for some of the positive and some of the negative aspects of Bill 26 within a local context—in this case, that's Oakville and the region of Halton—to give you a feel for how it impacts on us and also how it can benefit us.

Oakville-Trafalgar hospital is a 275-bed, acute-care community general hospital. We provide primary and secondary care services. We have approximately 265 medical staff and employ 1,200 people at our hospital. We serve a referral population of about 150,000.

At the outset, we'd like to indicate our support for the presentation that the Ontario Hospital Association made to your committee on December 18, 1995. We are also members of the OHA regional council 4, whom you heard from in Kitchener earlier this week, and we endorse the views contained in that presentation.

The following remarks focus on health service restructuring and, while representing the views of Oakville-Trafalgar hospital, are fully endorsed and supported by the other three hospitals in Halton. That includes Joseph Brant Memorial Hospital in Burlington, Milton District Hospital in Milton, and Georgetown and District Memorial Hospital in Halton Hills, and further is endorsed by the Halton District Health Council.

With respect to schedule F, health services restructuring, we fully support the concept of a provincial restructuring commission. This is an innovation which in the present funding circumstances is absolutely essential in order to ensure the restructuring of the hospital system on a priority basis and to preserve equitable access to services in all parts of Ontario.

To provide a local example, in October 1993 OTMH and Joseph Brant hospital in Burlington, under the leadership of our district health council, conducted a hospital utilization study. They had a specific mandate to

develop restructuring opportunities within the Halton hospital system. The conclusion of the study, fully endorsed by the Ministry of Health, was that, given the sizes of the communities of Burlington and Oakville, both of which are serving referral populations of 150,000, and the distance between these hospitals, each centre needed to maintain a range of acute-care inpatient and ambulatory clinical services to meet the community's needs close to home and to maintain the viability of the hospitals and the critical mass of each health professional group.

During the review, the hospitals formed a consortium that's maximized many joint venture opportunities and business alliances in administrative and in the hotel service areas of our hospitals. In short, the study concluded that the hospitals in the region of Halton are already restructured. Further, we are experiencing significant growth rates. Through 1991-96, the region of Halton experienced a population growth rate of almost 18%. In the next five years we're anticipating a growth rate of 15%.

At the same time, the regions of Halton, Durham, Peel and York, which we commonly refer to as the GTA 905 regions, have the lowest per capita funding allocations in the province. The GTA 905 hospital funding is approximately \$317 per capita, compared to an average of almost \$700 across Ontario.

The capacity of the Halton hospital system to reduce spending in the order of 19% to 20%, as is required in the most recent provincial economic statement, is much less than the capacity of other parts of Ontario. It is our hope that through mechanisms such as the Health Services Restructuring Commission the targeted reductions to hospital expenditures can be met by addressing overcapacity and/or service delivery duplication that is occurring in our current provincial system.

Again, we fully endorse and encourage hospital restructuring to ensure an equitable allocation of resources and an equitable provision of essential hospital-based services for all Ontario residents. There is a need, however, for government to clarify the mandate for the commission and to ensure that those on the commission are knowledgeable, objective and decisive. We understand the government is prepared to sunset the powers of intervention which Bill 26 confers upon the Minister of Health. We believe this is an appropriate step to preserve the principles of voluntary trustee governance and local community decision-making.

Further amendments we would ask for are as follows, and these points are consistent with the Ontario Hospital Association's position paper: Only the Minister of Health should be able to have the power to close or merge hospitals unilaterally; certain circumstances relating to when the minister can appoint a supervisor, particularly related to the availability of financial resources in the health care system in general, should be sunsetted in conjunction with the restructuring commission; and finally, the role of the district health councils in relation to the work of the restructuring commission needs to be clearly addressed, if not in legislation, then certainly through regulation.

We also support those areas of the bill that are aimed at assisting hospitals and health providers to cope with the budgetary situations that we are all facing. Elements such as guidelines for arbitrators, multi-year funding commitments, revisions to operating and capital plan processes and the ability to access other sources of revenue like crown foundations and copayments are welcome tools. We would, however, encourage you again to revisit the submission from December 18 prepared by the Ontario Hospital Association, particularly around arbitration rulings with respect to ability to pay and maintenance of pay equity issues.

From a personal perspective as a professional working in the system, I believe that after the restructuring and downsizing of hospitals it is essential that we move forward to develop a fully integrated health care system. We should now be envisioning a client focus system that integrates all providers, including facility- and community-based health services, physician and social service agencies. The integrated system should transform our now fractured current health care delivery model into a true system for the prevention and treatment of illness and disability for current and future Ontarians. We need responsible government leadership in order for these kinds of changes to happen to our system.

1430

Like our other colleagues across the province, we recognize the very serious financial circumstances facing the province in our health care system. We recognize that Bill 26 is in part a response to those circumstances. My medical colleague Dr Lorne Martin, chief of staff, will now speak to other sections of Bill 26 that deal specifically with medical manpower ramifications in the Oakville-Halton Memorial Hospital service provision.

Dr Lorne Martin: Thank you very much, members of the panel, for this opportunity to appear before you. I really want to take you right into our hospital and right into one particular service in our hospital which we are having some very significant difficulties with and try to explain to you the scope of those difficulties and how this bill is going to make things even harder for us, and that is the obstetrical care that we provide in our hospital and in our community.

My main point is that there is an immediate crisis in the delivery of obstetrical care, particularly in our community and in some respects province-wide, and that this bill will exacerbate that problem. When I say "immediate" I'm really talking about February 1996, and if this government doesn't take some steps to address that crisis, we will have difficulty providing obstetrical service to the women of this province.

I want to talk a little bit about prior to the omnibus bill. We have, in our community, practising right now five obstetricians. It's a community that would normally require seven. In fact, we did have seven 10 years ago. We did have seven five years ago, but we lost two to the United States and because of the general manpower situation across the province, we've had difficulty with recruitment and we have really been struggling over the last couple of years to maintain our service.

Of those five obstetricians, two of them no longer provide primary obstetrical care, so the lion's share of

work falls to three individuals. Of those three individuals, one's had a heart attack, one is pregnant at this time, so we really have one other individual who's quarterbacking the entire obstetrical care for our community. For the last year, we've been almost a day-to-day service. On Monday we've been wondering whether on Friday we were going to be able to maintain the service.

The family physicians, as you're probably also aware, have been abandoning the practice of obstetrics province-wide and we've also experienced this in our community. So there is a crisis. We have worked very, very hard to try to find some long-term solutions to this crisis. We believe, through recruitment, we can manage this and then unfortunately, along comes the omnibus bill and now we really don't know how on Earth we're going to get by.

I'm speaking now specifically to the cancellation of the Canadian Medical Protective Association reimbursement and I'm sure you're aware of this, but the obstetricians' malpractice payment has gone from \$5,000 annually to \$24,000 annually, and when delivering a baby remunerates a physician \$220, you can see how difficult it is to make up that amount of money and that amount of increase in malpractice insurance.

As a result of the omnibus bill, we've been informed by two of our obstetricians that they will no longer provide call, so we now, in terms of our call schedule, are down to three doctors and it just can't be done. This is a province-wide problem. I know you had a presentation from the Ontario Society of Obstetricians and Gynaecologists. I know that they informed you that they're talking about a complete withdrawal of obstetrical services come the middle of this year some time, a date yet to be established.

So I hope that you will hear this message, that there is an immediate crisis in relation to this particular medical service, and that it has to be addressed and it has to be addressed immediately. There are no solutions; there are no obstetricians out there whom we can find to work for us, and that is a problem that many, many communities are facing.

We have two specific recommendations for you and the first one and the most important one is that you defer the implementation of any change to the CMPA reimbursement program until these issues are negotiated and settled. I'm sure that if the implementation is deferred, our doctors will work with us in our hospital, but that would require a commitment that there would be no retroactivity to any decisions that are made.

You should also be very aware that if you, for example, just allow the obstetricians to have their reimbursement and you apply the law to all the other physicians in the province, you will have, in my opinion, immediate job action from a number of other medical groups that are going to be affected in the same financial way. So I don't think a specific solution to the obstetricians is going to work here either.

The second recommendation I have for you is that you recognize that the obstetrical fees themselves are grossly deficient and support measures to increase those fees. Two hundred and twenty dollars is just not enough to

sustain economically this medical practice for either family physicians or specialists.

My second point, and I'll be very brief about it, is around the physician human resource planning and the requirement to submit this document to the Ministry of Health for approval. I don't think they understand this requirement in the bill. I don't see what advantage it's going to give the minister. It's not going to address the fiscal issues. You already have complete control over hospital budgets. You have complete control over the overall OHIP payments. When we add a doctor to our hospital, we have to pay for it. It doesn't in any way increase the expenses to the ministry.

I gather the only advantage to the minister approving manpower plans is that it would allow the ministry to manage physician resources across the province. I don't think you can do it. Managing physician resources is a very complex issue. There are a whole bunch of local factors that will affect the requirements of a physician. When a respirologist retires and goes off the call schedule, the community might need a nephrologist to replace them. I'm not going to go into all the details. But I just think it's an information issue. I don't see how the ministry can centrally manage over 200 hospitals' physician manpower. I don't see how they could possibly have adequate information, possibly respond in a timely enough fashion, and I think you'll position yourself as being responsible for every time a patient needs to see a doctor who isn't there because you haven't approved it. You're going to end up taking that responsibility yourselves.

So my recommendation around the aspects of the omnibus bill that speak to physician human resource planning are that you either delete these altogether and maintain the status quo, or if there are requirements around restructuring, as John has said, we would support that, but those requirements should be tied to restructuring and should also have a sunset clause built into them so that they expire at the end of the restructuring portions of the bill. Thank you very much. That concludes my presentation.

Mrs McLeod: My colleague has a number of questions. We likely won't have time to get them all in. I just wanted to underscore the immediacy of the crisis in obstetrics and the need for urgent action on the part of the minister to fix the damage that's been done, and to comment that that is perhaps the most immediate example we have of the horrendous impact of one unilateral, thoughtless and very political action. God save us from some of these other impacts that other portions of this bill might have if they use these powers.

Mrs Papatello: Thank you. When you mentioned earlier that they really should sit down and negotiate something regarding the obstetricians and the crisis there, I thought, who are they going to negotiate with? They've already stopped negotiating with the OMA, and I have this vision of the ministry calling 23,000 doctors across Ontario and chatting about what kind of a contract they're going to have with that individual doctor, which in essence is what this government's proposing to do. It's just ludicrous.

I wanted to mention, in speaking about your hospital, you were talking about the allocation of funding. Would you say overall that you're well-funded, well-served in your community in general in health?

Mr Oliver: The research that we've been doing suggests that within the GTA 905 group, which are the 905 area codes, Halton, Peel, Durham and York have been experiencing very significant growth. In fact, every five years we add approximately the city of the size of Hamilton to the GTA 905 area. We are also behind somewhat in the per capita hospital funding. So the short answer is no, but that we all need to be part of the solution to the financial problem that we're facing and there need to be adjustments to our area, but we also need to be part of the overall solutions.

Mr Christopherson: Thank you for the presentation. You started earlier in your presentation talking about the fact that you really didn't know how you were going to find the 19% to 20% that you now have to find on top of all the other constraints that you've been under. Could you give me a sense of what sort of things are on the table if there's no relief from that 19% to 20% and you indeed have to follow through, notwithstanding the other things that are happening in Bill 26?

Mr Oliver: I have to be honest. We strongly are endorsing restructuring and encouraging it to be happening. I've been working with a restructuring committee that's looking at the issue provincially. We are looking now to find ways to absorb the 5% to 6% reduction that we're facing next year. The following two years we will have to be into service reductions in order to meet that kind of change in hospital funding within Halton.

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I do believe, and I believe others in our field feel, that through restructuring that kind of financial expenditure can be withdrawn from hospital funding, that there is enough duplication and excess capacity in our current system that the remaining amount can be found but it's going to require strong provincial leadership to make that kind of change happen in some of the health systems that we have around the province.

Mr Christopherson: And if that doesn't happen?

Mr Oliver: If the answer to that is across-the-board cuts that are applied equally to areas such as Halton, Durham, Peel and York as to other areas that have not yet restructured, then there will be inequitable service distribution.

Mr Clement: Just a brief comment on the funding formula arrangements. As a member from Peel region I'm quite sympathetic to your point of view. I think we've won the intellectual argument with the minister, and it's a question of doing the restructuring that has to be done in the hospital sector so that we can do the reallocation of funding formulae without having a deleterious impact in other areas.

But you've got me going a bit on the obstetricians, I must say, because I think the minister's made it pretty clear that he wants to try to find a solution for that. Then you come out and say, "But if we try to find a particular solution to the obstetricians and help them out, then it's going to be a job action." You can sense a bit of frustration in my voice, perhaps.

Dr Martin: Sure.

Mr Clement: I think the minister very much wants to deal with the OMA and find a solution to this, but now you've just threatened job action. How should the minister respond to that?

Dr Martin: I sure don't want to be perceived as threatening job action and I don't think I was suggesting no particular solution is possible. But with respect to the CMPA reimbursement, if you just say the obstetricians will be exempt from those requirements, the other physicians are going to perceive themselves in a very equal situation. It's going to precipitate a reaction from those groups, and I'm not threatening at all.

I don't think that's going to be the answer. There are other potential answers. There are answers, for example, in adjusting the fee schedule so that the obstetricians' remuneration is more reasonable, and in making a cogent argument that there's a problem there which pre-existed the omnibus bill and had to be addressed. So a lot of it is perception.

Mr Clement: I thank you for your last comment.

The Chair: Thank you, doctor; thank you gentlemen.

Mrs McLeod: You can't do a Caesarian section without an anaesthetist.

The Chair: We appreciate your presentation here this afternoon and your interest in our process.

Mr Agostino: Mr Chairman, as the groups are getting ready I take the opportunity to read other groups into the record that have made presentations to the shadow hearing. I present these to the committee: the Conserver Society of Hamilton and District, Josephine D'Amico and the Inter-Faith Social Assistance Reform Coalition, as well as other groups which I'll read later which have made and will continue to make presentations to the committee today. I'd like these in the record and for distribution to committee members.

Mr Clement: Mr Chairman, I also have a presentation to the committee. It's a letter to the minister from the Provincial Adult Cardiac Care Network in response to some comments that Ms Lankin made earlier in the proceedings, to share with the committee.

UNITED SENIOR CITIZENS OF ONTARIO
STEELWORKERS ORGANIZATION
OF ACTIVE RETIREES

The Chair: The next group is the seniors tenants of Hamilton, represented by Gwen Lee. Obviously, Gwen brought some help with her. Welcome to our committee.

Mrs Gwen Lee: Thank you for the opportunity to make a presentation addressing our concerns about some of the content of Bill 26. I am representing seniors in the Hamilton-Wentworth area, namely, Hamilton-Wentworth Housing Authority senior tenants; United Senior Citizens of Ontario, known as the USCO, zone 14; and the Steelworkers Organization of Active Retirees. I belong to all of these groups.

For the moment I must digress in order to establish the reasons for my concerns. In the Common Sense Revolution, on page 13, it is written that Ontario Realty Corp would be directed "to sell...more than 84,000 units owned by Ontario Housing Corp."

Now I will come to the health issue: supportive housing. When deregulation of the psychiatric hospitals took place, the Hamilton-Wentworth Housing Authority made several units available to former patients who are now out in the community with little or no support. There are now three supportive housing projects in this area involved with psychiatric patients. The one that I am familiar with, known as the Annex, is at 500 MacNab Street North in Hamilton.

The residents in the Annex are tenants with Hamilton-Wentworth Housing Authority, with all the rights, privileges and responsibilities of all Hamilton-Wentworth Housing Authority tenants. They have listed the various agencies that are involved in this program; it's quite lengthy. In order to be accepted as a tenant, he/she must agree to participate in the program and will rent the unit under the Landlord and Tenant Act. This building, at 500 MacNab Street North, is one of the buildings that this government is proposing to sell.

Another project now taking place is Aging in Place, which is at 801 Upper Gage Avenue, Sanford Avenue, and Macassa Apartments. Expansion is proposed to other seniors' buildings. These buildings are also part of the HWWA portfolio and are part of the 84,000 units that are to be privatized.

A third project is located at another HWWA building at 191 Main Street West in the city of Hamilton. This is a supportive housing project. There was grave concern that homes for the aged would only accept frail, elderly patients and there are not enough spaces for many seniors at risk. Many of them are not able to care for themselves in a normal setting. Supportive housing is the answer to this problem. Bachelor apartments at 191 Main Street West were renovated to meet the needs of people who would slip through the cracks in the system. Twenty units are already in place and another 20 units have been approved. I should say at this time that the district health council, out of their money, gave the money for this.

The residents in these units are rent-geared-to-income tenants of Hamilton-Wentworth Housing. There is 24-hour-a-day onsite care, and VON and St Elizabeth nurses provide care. There is an emergency response system and congregate dining at midday. I can answer any questions you have about what else exists there.

The 191 Main Street West project is a new initiative and is presently accepting applications. Seven tenants have already been approved and many, many more applications have been made. There will be no difficulty in filling the units with tenants who meet the eligibility standards.

All of these projects are at risk if the apartment buildings are sold. The safety net that is now in place will be gone, and vulnerable people will lose the security they now have. If these buildings are sold, the landlord is not going to allow these programs to continue. These tenants will then be out in the community, scattered all over the area, with little or no support, at much greater cost than at present. I urge you to show compassion for the tenants concerned and to realize the damage you will be doing to supportive housing if these buildings are privatized.

The government says that it will consult with families, volunteers, members of the disabilities and seniors communities, the medical profession and caregivers. These hearings taking place now are too little and too late. There is not enough time to hear all who have genuine concerns.

When I came to Canada in 1946, there was no health care system. You only got help if you could pay for it. Please don't return to the old ways. Many of us fought long and hard for what is now recognized as the best health care system in North America. I urge you, do not pass legislation that will make the poor, the disabled and some seniors unable to get the care and medication they need.

On page 4 of the Common Sense Revolution is a statement that "policy is designed to meet the needs of the less fortunate and the disadvantaged." I urge you to keep this commitment and to show compassion to them and really give a hand up.

Thank you for listening and hopefully acting on some of the concerns I have addressed, including rethinking on privatization of OHC properties.

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Mr Bill Fuller: My name is Bill Fuller. I represent the Steelworkers Organization of Active Retirees in the province. The presentation I make will be on behalf of both SOAR, the Steelworkers organization, and the United Senior Citizens of Ontario, of which I am also an officer.

I guess I regret somewhat the way the opportunity came about to address the committee here. Our organization, through Orville here, made representation or a request very early to be considered for representation at this hearing. We're still patiently waiting for a response as I guess are the rest of the retirees of this community. It kind of ticks me off, so I'll be quite honest about it.

Let me begin by thanking Gwen Lee and the Ontario Legislature for the opportunity to put forward a few of our organization's views on a far-reaching, mean-spirited Bill 26 and the effect it has on our health care, not only in our community but in the province as we see it and understand it. The bill at best should have been put forward in three or four sections so that proper attention and scrutiny as well as understanding could have been more comprehensive, not only to the recipients but to the providers of the existing health care services.

The government's original position on the bill was to put the legislation into effect with little debate or disclosure of the impact Bill 26 will have on the communities, the existing health care system and the many different segments of people in our province. Bill 26 will place an undue burden on the poor, the marginalized, the young, the seniors and the challenged in our communities throughout the province. It is our belief that a health care system cannot be operated on the basis of straight economics, which Bill 26 accommodates. The human aspect, tempered by understanding, compassion and yes, even common sense, is necessary.

The bill introduces user fees, unrestricted costs and the loss and security and protection of services established in the current health care system. Giving bureaucrats executive authority to close hospitals with one stroke of

the political pen, with little or no justification, is ludicrous at best.

The government's termination of the long-term care program is another example of operating in a vacuum without the benefit of adequate study or even consultation with the local health councils that have served our community so well.

Seniors have been promoting the savings and benefits of long-term care in excess of 10 years. That's a long time. It seems the program was scuttled to satisfy the interests of a few profit-making providers in health care services at the expense of the elderly and their families, who will be the losers.

The provisions of the Public Sector Salary Disclosure Act in Bill 26 of the hospital executive officers' salaries in excess of \$100,000 per year did in fact put sufficient pressure on some of our local hospitals to disclose the salaries or salary ranges of some of the hospital executive officers. Some of our hospitals did not think this was necessary even though those funds came directly from the taxpayers.

Following the tabling of Bill 26, the hospitals, namely the General and the Henderson, as well as the Chedoke-McMaster Hospitals, agreed to pursue a merger of these hospitals with the blending of services. The announcement by the hospital spokesperson indicated a huge saving in health care costs over the not-too-distant future, and that may well be possible.

The other side of that issue is the fact that the hospitals made these decisions and announcement in isolation. There was no discussion with the government, the employees of the hospitals, their unions or even the Hamilton and District Health Council. One can only come to the conclusion that the decisions were made in the best interests of the hospitals.

What will the impact on this decision have on other hospitals in our community, such as St Peter's—and this was written before the announced cutback at St Peter's—or the community health centre at St Joseph's in our east end? I was an integral part of watching that community health centre emanate from the fruit farm that it was prior to being what it is today.

The decisions may impact on the other surrounding communities and hospitals as well, and I'm sure they will. It'll have more far-reaching effects than just on the community of Hamilton here.

The health care system in Ontario, although not perfect, is a system that makes our province and our country unique. People from many countries visit Ontario to view first hand the health care system now in effect. I think the St Joseph's Community Health Centre in the east end is one of those facilities where people do come, on a very regular basis, to look at that type of a facility.

It's taken many years to reach the level of service that our health care provides, and it has served us well. To have any one group, be it a government that seems only interested in the economic aspect of our health care system or a hospital board that is only self-serving in its decisions, is unsatisfactory and will destroy the system as we know and we understand it.

Only understanding, cooperation and full consultation with all parties in an open and clear atmosphere where all

participants are heard is acceptable. Anything less will lead us back to the system in the days—and it's not too many years ago—when the health care system served only those who could afford it.

Bill 26 will put that undue burden on those groups I mentioned earlier. The simple fact is that health care is a societal issue. It's not a partisan one; it's not something you can run on sheer economics. It just doesn't work.

I watched with interest in the United States the effect of grey power on the election down there where the Democratic government was elected. The issue there was health care as well. The senior citizens in Hamilton, although we may not count a great deal, over the next few years there's going to be a dramatic increase in that, and I'm certain you people know about that. These people just don't need the aggravation.

I can picture the residents of St Peter's Hospital. I'm a diabetic; I use their chiropody clinic there. I don't know how many patients they have who go through that small segment on an outpatient basis; probably 1,000, maybe 1,500. Most of them are diabetics. Under all probability that's one of the outpatient services that will be dropped. If it is, I don't know who's going to keep track of the number of limbs that are going to be lost from diabetes. I daresay that there will be many. They're all elderly that go there, let me assure you of that, and a lot of them are the frail elderly that are residents there. It just disturbs me to no end that seniors were not given the consideration that I think they should have been entitled to.

That, basically, is the presentation from the United Senior Citizens of Ontario and the Steelworkers' Organization of Active Retirees.

Mr Christopherson: To Gwen Lee, Bill Fuller and Orville Kerr, thank you very much. For those members who aren't from the Hamilton area, these are three of our leading lights in the fight to represent the needs of seniors in our community. If you spend any time at all in Hamilton, especially in Hamilton politics and Hamilton issues on the activist side of things, you'll find these three popping up constantly, out in front, making sure that the needs of seniors are being represented. Again, whenever I have a chance I like to do this. I want to thank each of you, Bill and Gwen and Orville, for the work that you do and the contribution you make to our community, and you're doing it again today. I thank you very much for that.

I want to say to you that the position of the New Democrats in the Ontario Legislature with regard to Bill 26 and the other actions of the government has led us to believe that in many ways the needs of seniors, particularly those who are low income and more vulnerable—because, like everyone else, if you've got money you don't have as big a problem with some of these things as if you don't—as we see it, all the measures of the government to date, in particular Bill 26, lead us to a whole series of issues that could lead to a serious decline in the quality of life of seniors in Hamilton and other communities across the province.

It is, of course, health care, which is arguably the most single important issue, but there's changes to the Ontario drug benefit plan.

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The housing that you mentioned, again can have an enormous impact if there isn't proper housing and the supportive services that Gwen spoke of.

When we talk about use fees, let's remember that it's seniors who use the libraries and recreation services disproportionately, if you will, to other parts of the community, and for very good and obvious reasons.

Bus fare increases are likely as a result of transfer payment cutbacks this government has made.

Seniors are very concerned about their vulnerability with regard to fire protection and police protection, and we've heard firefighters and police officers coming forward expressing concern about the ability to maintain the level of service that they have. I can't say directly to these government members, but I can on the other committees I've been on, that positions like that have them saying, "You're just fearmongering," and so I would put to the three of you who are here, do you think that that is fearmongering and rhetoric, or is there a legitimate concern in the areas I've mentioned in the ranks of the seniors in our community?

Mrs Lee: That's the way it is out there. I should long ago have given up what I'm doing, because I'm 81 and I'll soon be 82 and it's about time to wind down a bit, but I've been involved with the Hamilton-Wentworth Housing Authority, I was vice-chairman of the seniors council and all these other things that come along with it, and everywhere I go I hear, "What is going to happen to us with this Bill 26?" People are scared without even having seen it, just by what they're hearing from other people. So I'm sure if they had the document they'd have a fit, thinking what might happen to them.

Mr Fuller: Can I respond to that one very briefly? Very briefly, just imagine what's going through the minds of the residents of St Peter's at this particular time. Can you imagine what's going through their mind? They're in the latter stages of their life. What kind of a message is that to them? You know, they don't need that.

Mr Ed Doyle (Wentworth East): Thank you very much for appearing. I really appreciated your comments, both of you. You mentioned you had come here in 1946, and at that time there was no health care—

Mrs Lee: No, there was nothing. That is one of the badges that we used to use in those days when we were trying to get it.

Mr Doyle: Yes. And I think it was Mr Fuller who mentioned that we're concerned that this is an issue which should not be partisan. I think I agree with both those comments, that we're certainly not in any position where we want to see our health care system deteriorate and we certainly don't want to be in a position that you had expressed as a possible fear of losing it altogether.

We truly believe that the actions we're trying to implement are simply so that we can ensure we don't have a deteriorating health care system. We're trying to ensure that it is protected, not just today and tomorrow but five years down the road, because of our extreme concern over a debt that continues to mount—\$100 billion, \$1 million an hour that we're spending, and so on. These are some of the reasons that we're taking measures that in some cases certainly may appear to be

unpopular, but they're measures we're attempting to take to ensure that we protect our society, to protect the elderly, to protect all members of society, the young and the old as well.

Having said that, I would like to ask you, are you aware that under the changes to the drug benefit plan 140,000 new people will be added to those rolls? These are people who do not make very much money, less than \$20,000 a year, but they will now be added to the rolls. I simply want to know if a \$2 fee, in order to help finance that a little bit, will help put the 140,000 people on to the rolls to ensure they have a little bit more assistance as well. Do you agree with that?

Mr Fuller: Could I respond to that? I'm vice-president of the St Vincent de Paul in the east end of the city with Holy Family parish, and they bring aid and assistance to the poor. I don't have a book full, but I have a number of pages of families in that east end. Most of them are single-parent families with two or three children who have had their welfare cheques cut, and let me assure you, those people are not going to pay \$2 for a prescription. They don't have it. They don't have enough money for food, for goodness' sake. We take food to them. It's the poorest of the poor. I don't know how you can convince the people in St Peter's hospital. You maybe even go down there this evening and ask them first hand if they're convinced that there are no cuts in the hospital budget. Your revolution speaks of that: "We will not cut health care spending." You convince them. I wouldn't want that. You just can't do it. Talk to the seniors.

Mr Agostino: First of all, I want to add to what my colleague David Christopherson said on the great work that Gwen, Bill and Orville have done in the community. Certainly from the time I spent on council I've seen them a number of times make presentations and fight very hard on behalf of seniors across this community at city council and often quite successfully. I appreciate the work and the commitment they have to our community.

Your brief says it all. I think the betrayal of seniors started the day after the election. It started the morning of June 9 and it has continued. They were not going to cut aid to seniors. This government was not going to cut programs for seniors. We saw the programs of social service agencies that dealt with seniors being gutted. We saw the imposition of user fees: a total betrayal of the commitment the Premier had made during the election that user fees would not be implemented, and particularly on the people who are least able to afford it, and senior citizens on fixed incomes and obviously with high medication costs affected by user fees. Now we have seen the health care component in St Peter's, as Bill mentioned, a perfect example of cuts to health care that are hurting senior citizens across Ontario. It's that simple. There's no other way.

St Peter's is not doing this because all of a sudden they woke up and realized they had too many staff people. St Peter's is doing this because this government has made it clear that they're not going to get the money to run the programs they're running and to give the kind of care that seniors need in this community. That is why the layoffs were announced this morning and that is why more layoffs are going to happen in the health care

system and the hospital system across this city and this province as a result of your government funding cut to these hospitals who need the money to carry the programs they're carrying.

The DARTS locally, the same way. Transportation cuts have occurred. DARTS—for people who are not from Hamilton, it is the disabled and aged transit system, parallel to the Toronto Wheel-Trans system. Major cuts have occurred there, cutbacks, as a result of transfer payments that have been cut.

These are some of the early effects that the Common Sense Revolution is having on senior citizens across this community. I think there was a gentleman who made the reference to grey power and the impact it has. I certainly realize how important it is. All of us around this table had better understand very clearly that, this betrayal continuing, there will be one hell of a political price to pay four years from now at the polls for this government. The senior citizens of this province are going to lead that charge. With that statement I'll turn to Alvin Curling, who may make a statement for the rest of my time.

The Chair: The gentleman here, did you have a comment on that, sir?

Mr Orville Kerr: I'm representing a group that is mostly senior citizens. There's a group of about 30 patients in Jarvis, Caledonia and Hagersville. This nurse, who is a friend of mine—this is just an example—two weeks ago she was given notice. Talk about deterioration of the health system. There's one case here where those 30 patients were relying on this nurse to look after them. They're rheumatoid arthritis patients who are unable to get out of their homes. She was given notice that her service wasn't required any more. I said, "Well, who's going to look after them?" She said: "I have no idea. They never told me." So that's one example. This has already started.

I put in an application to register for this hearing and there was so much to be said about Bill 26. After reading that bill, I never saw anything so dictatorial in all my life. When I watched those members at Queen's Park, and I was as close to them as I am now, sitting at my television and looking at those people, their attitude for the criticism the opposition members have imparted to this bill, and they wanted to put that through before Christmas—that's a disgrace. That bill should have been split up into different sections and discussed properly. They're supposed to be representing the people of Ontario.

1510

The Chair: Thank you very much. We appreciate your being here this afternoon and your presentation.

Mrs McLeod: Mr Chairman, I would like to place two questions on the record for the committee.

The first is to the Ministry of Health. Because I feel after two weeks of hearings that answers to these questions are urgent, and because I think the information should be readily available, I ask that the response to this question be tabled with the committee before the amendment process begins on Monday morning.

The question arises from a news release that the Minister of Health has put out today in which the statements attributed to the Minister of Health are in direct contradiction to the information in the backgrounder, as

to the nature of one of the specific amendments that's been put forward, and in fact appears to be totally contradictory to the amendment itself.

I point out to the Ministry of Health, so that they can follow the question, that in the news release of the Minister of Health it says, "The general manager of the Ontario health insurance plan will only be able to recover or withhold payments for non-medically necessary services on the advice of a physician." It furthermore says in a direct quote attributed to the Minister of Health, "From the outset, it was never expected that medical necessity would be determined by anyone else but a physician." Mr Chairman, I think that is a deliberately misleading statement on the part of the Minister of Health.

Furthermore, it is contradicted in the background document that is attached to the press release, in which it says, "Amendments to this section of Bill 26 make explicit that the general manager's actions to recover moneys or deny payment on the basis of 'medical necessity' are guided by the advice of a physician." I think you will agree that those are not synonymous statements, that "guided by the advice of" is not the same as "withholding payments on the advice of."

Furthermore, there is a lack of consistency with the wording of the amendment itself, which states very clearly that if after consulting with a physician he or she, ie, the general manager, is "of the opinion" that all or part of the services were not "medically necessary," payment can be denied.

I will not read the whole amendment into the record, but I would like a very clear, uncategorical answer from the Ministry of Health as to exactly who will determine "medically necessary" and determine who will be able to deny payment in the first instance, on the determination of it not being a medically necessary service.

Mr Chairman, I think that is a legitimate request before the amendment process begins. As the last presenter has just said, this is an incredibly difficult bill for people to understand. The amendment process is going to be even more difficult as we attempt to go through clause-by-clause and relate this bill to previous bills to amend it.

When the Minister of Health puts out press releases which are in my view a deliberate attempt to distort the nature of the amendment, I think we have a very serious concern about the public understanding of the process we're engaged in.

The Chair: Thank you, Mrs McLeod.

Mrs McLeod: I have two questions.

Mrs Caplan: Go ahead.

Mrs McLeod: Did you want me to do the second? You may have a third.

Mrs Caplan: Yes.

Mrs McLeod: My second question is to the Minister of Health.

The Chair: Are we going to allow these people just to sit and wait to read their presentations?

Mrs McLeod: I will be very brief, Mr Chairman.

The Chair: But everybody's got their hand up for a question.

Mr Clement: It sounds like we're debating the amendments already, Mr Chairman.

Mrs McLeod: Mr Chairman, we have been two weeks, a very short two weeks, hearing from hundreds of people

who are concerned about this bill, and every presenter has said it has been difficult to understand the nature of the bill and every presenter has said, "We hope the Minister of Health will listen and will respond." I think, to take a few minutes now towards the end of these presentations to express a very real concern that there is still not clarity being provided by either the Ministry of Health or particularly the Minister of Health, is a legitimate use of the committee's time for a few moments. In that regard I will just place very briefly a second question. This one is to the Minister of Health.

The Chair: My comment was out of respect for the people who are waiting to present. That was all.

Mrs McLeod: I understand that, Mr Chairman, but I think that the people are here because they are concerned about this bill. I want to place a question to the Minister of Health, again in relationship to the news release which was put out today in which the minister says—and it is in quotes; I realize it is not his voice speaking but it is in quotes—"Bill 26 has always protected patient confidentiality." I would like to ask how the Minister of Health can possibly make that statement, particularly when he is bringing forward amendments to the confidentiality provision and particularly when he has not been present to hear every presentation which has raised the concern about lack of protection of confidentiality.

Mrs Caplan: I want to place one very short and quick question. There's a quote from Mr Wilson in his press release that says, "From the outset, it was never expected that medical necessity would be determined by anyone else but a physician." I see no amendment here, Mr Chairman, and I would ask the minister specifically to say where the amendment is that will delete cabinet's ability to determine what is medically necessary if this statement that the minister made in this press release today is true.

Ms Lankin: Dealing with the same specific amendment, a very quick question as it's in the press release which is reflective of the amendment, "The general manager of the Ontario health insurance plan will only be able to recover or withhold payments for non-medically necessary services on the advice of a physician." I would ask for a clarification.

It is my understanding that the general manager of the Ontario health insurance plan will also only be able to recover or withhold payments for non-therapeutically necessary services on the advice of a physician, which I believe means the general manager would consult with a medical physician with respect to therapeutic necessity of services by such health care professionals as chiropractors, physiotherapists and chiropodists.

Mr Clement: That's right.

UNITED STEELWORKERS OF AMERICA, DISTRICT 6

The Chair: Our next presenter is the United Steelworkers of America, represented by Harry Hynd, director of District 6, and Sheila Block. Welcome.

Mr Harry Hynd: The Steelworkers represent more than 80,000 women and men in a wide range of different industries in Ontario, from miners in northern Ontario to steelworkers in Hamilton to department store, super-

market and manufacturing workers throughout the province, to taxi drivers in Ottawa, to hospitals, to nursing home workers in eastern Ontario. Our members have an interest in the health aspects of Bill 26, both as consumers and as providers of health care.

The Steelworkers is a member group of the Canadian Health Coalition. The coalition works towards maintaining a universal, accessible health care system for Canadians. A useful guide to evaluating the impact of Bill 26 is the coalition's 10 goals for improving health care for Canadians. In considering the changes to the health care system that will result from Bill 26, I found it useful to ask myself whether these changes will make progress towards meeting these goals or whether they will take us further away from them.

The goals include:

- (1) Create good health;
- (2) Preserve and strengthen the Canada Health Act, the foundation of medicare;
- (3) Make the health care system democratic, accountable and representative.
- (4) Provide a continuum of care from large institutions to the home.
- (5) Protect our investment in the skills and abilities of our health care workers.
- (6) Ensure fair wages for all health care providers.
- (7) Eliminate profit-making from illness.
- (8) Reduce overprescribing and make drugs affordable.
- (9) Stop fee-for-service payments.
- (10) Expand methods of health care and the role of non-physician health providers.

Make the health care system democratic, accountable and representative: If Bill 26 is passed, it will provide cabinet and the Minister of Health with unprecedented new powers over the delivery of health care and the operations of hospitals and other health care facilities. Decisions about health care will be made without parliamentary debate or public scrutiny and without input from the community, from health care consumers or from health care providers.

Until now, the Health Insurance Act has required that OHIP cover all medically necessary services provided by doctors. Bill 26 removes any reference to "medically necessary services," substituting a broad power in cabinet to decide which medical services will be insured. It will also give cabinet the power to set any limitations or conditions that it wishes.

The Public Hospitals Act is amended to give the Minister of Health virtually unlimited powers with respect to funding, operation, closure and amalgamation of hospitals. Bill 26 will take away the independence of hospitals and the communities they serve to make health care decisions and will provide overriding control to the Minister of Health and cabinet. Court decisions have ruled that under the existing Public Hospitals Act, the minister cannot ignore patient care and use only budgetary considerations in deciding whether to close down a hospital. The bill will allow the minister to close and amalgamate a public hospital whenever the minister decides it is in the public interest to do so. It then allows the minister to decide what constitutes public interest.

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The minister's power over the provision of funding to hospitals will no longer be limited by the regulations under the act. As a result, the minister can decide all hospital funding matters without taking into account the criteria that are now in the regulations. Funding can also be made conditional on meeting the minister's criteria. The only limitation on the minister is whatever he deems it possible in the public interest. Once again, the minister can decide what is in the public interest.

The bill also gives the minister the power to tell a hospital what services to provide, in what amounts to provide services or whether or not to stop providing certain services.

However, it seems that the total control over funding, the continued existence of hospitals and the services provided were not sufficient draconian powers for the minister. The bill will also provide the minister with the power to force a hospital to do anything else he wants to do which is in the public interest. Once again the minister decides what the public interest is.

The Private Hospitals Act was amended in a similar way. The minister will have the power to revoke a private hospital licence at any time and to reduce or terminate any grant, loan or other financial assistance without notice. The hearings and rights of appeal that are currently provided for under the act will no longer be available.

The amendments to the Independent Health Facilities Act similarly expand the powers of the minister. It gives the minister more control over the services that are currently provided under the act. It also expands the power of the minister to bring services under the act. Once they are brought under the act, the minister can control who provides the services and how they are provided.

The concentration of this kind of decision-making power in the hands of any minister would be draconian. The lack of any regulation or a definition of the criteria on which decisions are to be made reduces accountability. This is a huge step backward from the NDP government's moves to provide communities, consumers of health care and providers of health care with input into the decisions about the provision of health care.

Health care workers provide services so important to the community that life or health would be threatened if they were withdrawn. Because of this, they are denied the right to strike in support of their collective bargaining demands. As an alternative to the right to strike, these workers have access to a process of interest arbitration. A neutral third party determines their contract when the parties come to an impasse in bargaining.

Bill 26 contains amendments which will circumscribe that alternative to such an extent that it may become ineffective. The bill introduces additional criteria into the arbitration process which arbitrators have consistently found to be political in nature and impossible to apply in practice. These additional criteria are the employer's ability to pay in the light of its fiscal situation; the extent to which services may have to be reduced if the current funding levels are not increased; the economic situation in Ontario and in the municipality or municipalities concerned; a comparison of the terms and conditions of

employment and nature of the work performed with other employees in the broader public sector; and the employer's need for qualified employees.

Arbitrators will have to take ability to pay into account in their arbitration decisions. At first glance, this may sound reasonable. However, arbitrators have been unable to define "ability to pay" in the public sector. They have argued that "ability to pay" in the public sector really means "willingness to pay," which is unilaterally determined by the employer.

The criterion could allow governments and employers to unilaterally determine wages and benefits by simply allocating a fixed or reduced amount for employee compensation in their transfer payments or budgets. It compromises the independence of arbitrators and the integrity of the arbitration process by leading them to a predetermined result and biases their decisions in favour of employers. The International Labour Organization, in 1985, acknowledged that the imposition of an ability-to-pay criterion deprives employees of a fair and impartial mechanism for determining their terms and conditions of employment.

It will also undermine the collective bargaining process. It is the uncertainty of the outcome of the interest arbitration process that provides an incentive for reaching a negotiated settlement in the health care sector. The amendments in Bill 26 eliminate that uncertainty. Employers will be able to fix or reduce the budget for employee compensation and then turn around and argue that arbitrators are bound by the employer's own budgetary decisions. There would be little, if any, incentive for employers to reach an agreement when arbitrators, in their awards, will have to impose the employer's position.

The amendments in Bill 26 will also require arbitrators to take into account potential public service cuts in their awards. This puts arbitrators in the position of making decisions about the levels of public services that will be provided. These are decisions that should be made by politicians who are accountable to the public.

The bill continues on to introduce two other new criteria: the economic situation in the municipality, and the employer's need for qualified employees. These criteria add further complexity to the arbitration process. Wages in the health care sector have been moving towards an industry norm over the last 20 years. Arbitrators will now be required to evaluate the relative economic performance of municipalities in the province. They will then be required to determine what the impact of these differences in economic performance should be on wage rates. Putting aside the difficulty of this task, what is the point of it? If the steel industry is in a slump, why should that have any impact on the wages of health care workers?

The Steelworkers represent workers in nursing homes, retirement homes and hospitals across Ontario. These workers provide care for the sick, the elderly and the infirm in our society. They provide the support services that allow the rest of us to continue to go to work and to school and to care for our children. They let us do these things with the assurance that members of our families who are in need are cared for. These women—for the vast majority of the workers are women—do work that is literally backbreaking. The injury rate in this industry is

notoriously high. These workers do not receive public acknowledgement or recognition for the essential services they provide. However, the least we can provide them with, as a province and as a society, are fair wages and working conditions. The proposed criteria in Bill 26 will prevent these workers from keeping fair wages and working conditions when they have achieved them, or from ever attaining them if they have not.

The bill will eliminate the requirement in the Independent Health Facilities Act that preference be given to non-profit Canadian operators. This opens the door to for-profit US health care providers to be licensed and provide health care services under the act. Shame, shame, shame.

Bill 26 will amend the Ontario Drug Benefit Act so that the government can introduce a system of user fees. There are also changes to the pricing of drugs under the act. The bill replaces the existing best-available-price requirement with a price agreed to by the manufacturer of the drug. The bill will deregulate the price of drugs charged to everyone who is not covered by the Ontario drug benefit plan. Manufacturers will be able to charge whatever they like. This deregulation, in combination with the monopoly power that the federal Tories gave to multinational drug companies, will result in increased prices for prescription drugs. It will also result in more variation in the prices of drugs across the province. In remote areas like the mining communities in which many of our members live, there will likely be large increases in drug prices.

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The concentration of power in the hands of any government to the extent contemplated by this bill would be wrong. This bill punishes health care workers. It further removes decisions about the provisions of health care services from consumers and producers of those services and denies the democratic process. All of this is aimed at reducing health care expenditures by at least \$1.4 billion. The huge reduction will be implemented by a government that promised not one cent of spending would be cut from health care.

Bill 26, unamended, will reduce the quality of health care in the province. The government should proceed with those portions of the bill that are essential for the functioning of government. It should give much more extensive study to the rest of the bill and allow for much more public input. Thank you.

Mrs Ecker: Thank you very much for coming today and bringing forward some very detailed and comprehensive comments about your concerns about Bill 26. There are just a couple of quick points I'd like to make.

With Bill 26, there's certainly a lot of disagreement about who decides what a medically necessary service is, but I do believe, from my reading of the legislation, that medically necessary services as a concept are certainly included and maintained in Bill 26, so I think that's a piece of information that may be of assistance to your consideration of the legislation.

Secondly, the other point that I would like to make as well is that this government—and I've said it many times during these hearings—is not prepared to get into a non-productive fight with the federal government over the Canada Health Act, and there are many references in Bill 26 to abiding by the Canada Health Act. There's another

one here that talks about, "A regulation...shall not include a provision that would disqualify the province of Ontario, under the Canada Health Act, for contribution by the government of Canada...." So I think there's certainly not only an intent and an objective but wording that would also support that, because we believe that is also something that is very, very important.

One of the things that we did talk about in the election—and again, I can only speak for what I said in my riding, but I was very, very clear that what we were talking about was maintaining the health care envelope at \$17.4 billion and restructuring within that envelope and finding savings from one area in one kind of care to reinvest into another area or another kind of care. And we've heard very much from many people here about the unique needs in various communities and various regions for different kinds of reinvestment. We've also heard we need some mechanism—there's disagreement about how, but we certainly have heard the message that we need to get on with reforming and changing the system.

You've made some criticisms about the current restructuring powers the government has. We have put forward some amendments which may or may not address your concerns. Do you have any further comments about how you believe the restructuring exercise should be continuing within communities so that we can get on with an objective that I believe we all share?

Mr Hynd: Well, you've asked lots of questions. I'll try to answer the ones I can remember.

I derive no satisfaction from what you may have said to your constituents. I can only derive my information from what I read in the Common Sense Revolution, what I've heard from the government in the media, what I saw on the television and what I've read in the legislation.

I don't believe anyone could expect that the health care system would continue to provide the same kind of care that it does if you say there's a spending envelope that's going to stay closed. That's like saying to anyone in Ontario that we're going to improve and maintain your standard of living, but your wages will remain constant.

I can also tell you that I know that health care in Ontario will deteriorate. I can tell you that I know that the health care providers will be demoralized by the results of this legislation. I can tell you the standards of living by the health care providers will deteriorate. I can tell you that the provisions and the services that they provide will not be maintained. That's just a fact of life. If you think about your envelope and you think about 10 years down the road and you tell me that that envelope will provide the same services, I doubt it.

Mr Alvin Curling (Scarborough North): This is a government that took 22% from the poor and told them that they can live better. This is the government also, as you said, sir, that took \$1.4 billion from health care, which told us that they would not take one cent out, and tried to look us straight in the face and say they haven't touched it. We saw it. We saw it in the statement they did, and still coming to us and telling us they didn't touch it. This is the government too that tells you, as you sit here and give your presentation: "Tell us more. You haven't told us a thing." That's what the Tories have said: "Could you tell us more." I would say to this government that giving you, sir, and the people of

Ontario the limited time to comprehend this huge bill, which they don't understand, and asking you, "Give us more," you've given us a lot to look at.

My question to you is, having given us all of that to examine, do you think they have listened? Do you think they heard it? Do you think they'll change?

Mr Hynd: I don't have any sense the government will change. The government was forced into these hearings. It's unfortunate that these hearings didn't last much longer. I think that given an opportunity, the populace of Ontario would want to speak about the negative impact this bill will have on the people of this province in a myriad of ways, including our rights. We would be talking about this for an eternity. This is a draconian bill.

Mr Curling: As you can see, our leader and all the members of the opposition asked for extended time with this bill. Not partisan stuff, but to understand the impact that this is going to have on the lives of our people.

The senior citizens were here a while ago and mentioned about selling off the houses on the senior citizens, which the minister has indicated he will do, and the appeal to them, "Don't do this, because things that you have done before are hurting us." And the minister continues to say he will sell off all the Ontario Housing to the private sector without any concern.

Tell me, do you see any face at all, any soul or so, any human feel of this bill, or just the bottom line, talking about \$1 million is being spent on paying off the debt? Do you see any concern for people in this bill?

Mr Hynd: If there was a care for human souls in the provision of health care in this bill, the bill would look a lot different than it does. It would be trying to improve health care. It would be offering health care providers an opportunity to tell the government how in their view health care could be improved. We do have a good system, but it's not perfect. I think this will make the health care system much worse in Ontario.

I know that I derive no satisfaction from all levels of government that affect us here in Ontario with respect to the health care of Canadians. In the federal government there seems to be an indication of the same problem, that they are looking at health care with an economic viewpoint rather than the economics not being dictated in reducing the provision of health care. If in fact the government, both levels of government, were really interested in saving money from health care, they would look at the huge salaries they have paid to a whole bunch of hangers-on. They would look at the massive profits that have been made through the deals that were made on the drugs and that will be extended by this legislation. So I think health care is going to be a lot worse than it is.

Mr Christopherson: I want to thank you, Harry, for coming in and making this presentation. In Hamilton, of course, steelworkers are a significant and important part of our community and have shaped in large part a lot of the values that our community has. I think it's great that you came in here today and spoke not only on behalf of Hamilton steelworkers but all 80,000 of your members across the province.

You will know that this government from the outset, even before the election, has done everything it can to take unions and slap a label on them of special-interest. In making that label stick they can then disregard and

dismiss you by trying to convince people that the only thing you care about is you and yours, and everybody else be damned. Unfortunately, they've been able to do that with an awful lot of people like environmentalists, feminists and people who fight for those in poverty etc. Eventually there's nothing left but their own special interests, which of course are the very well-to-do in this province.

I say that because I think it's worth noting that fully half of this presentation had nothing to do with wages, had nothing to do with working conditions of the members of the Steelworkers' union in Ontario but rather spoke to health care, quality of life, public services, all the things that make Ontario the great place to live in that it is and all the things that this government seems to be going after. That needs to be said time and time again.

I want to draw attention to page 5, Harry, where you talked about the fact that their changes to the Independent Health Facilities Act may open the door to non-profit, US-type health care. At the end of that you threw in, "Shame, shame." Why should your members and other workers in this province care so much about the introduction of for-profit, US-type health care services in Ontario? Why does that matter to working people?

Mr Hynd: It matters to working people and should matter to Canadians. If one really looks at the health care system in the United States, the people I spoke about making ludicrous salaries in the health system have expanded 100-fold in the United States. It's a big-money business. Anyone who wants to look at the operations that have been performed with frequency, for money—when you're in business, you're selling a product. If you're selling the removal of appendices, then that's what you'll do. I think it's criminal that we would open the doors to profiteers, because the health care system was introduced because people couldn't afford to pay for health care on the basis of when they needed it.

I don't have to go back to 1946. I didn't come here in 1946; I came here in 1957. I can remember in the 1960s when a young child three months old was injured in Hamilton, brain-damaged, no ability to fix that in Canada. The cost of that operation to that child was \$10,000 in the 1960s. I made \$2,000 a year in 1960. The parent of this child was an electrician. We had a collection in the plant and collected about \$5,000. But that Steelworker today—or I should say yesterday—would have no fear about his ability to have his child looked after in a humane, professional and decent way. But tomorrow that Steelworker is going to be concerned.

The Chair: Thank you, folks. We appreciate your presentation and your interest in our process.

We're going to take a short three-minute recess.

The committee recessed from 1544 to 1547.

ST JOSEPH'S HOSPITAL, HAMILTON ST JOSEPH'S HEALTH CARE SYSTEM

The Chair: The next group of presenters represent St Joseph's Hospital: Sister Joan O'Sullivan, Mr Paul Wendling, Mr Allan Greve and Mr Brian Guest. Welcome.

Sister Joan O'Sullivan: Thank you, Mr Chairman, for the opportunity to respond to Bill 26, the Savings and

Restructuring Act. My name is Sister Joan O'Sullivan. I am the vice-president of St Joseph's Health Care System and am here on behalf of Sister Teresita McNally, who is president and chair of St Joseph's Health Care System. My past experiences include time spent as a CEO in two hospitals within the Hamilton diocese.

With me are Mr Paul Wendling, chair of the board of trustees of St Joseph's Hospital, Hamilton, and member of the board of directors of St Joseph's Health Care System; Mr Allan Greve, president and CEO of St Joseph's Hospital, Hamilton; and Mr Brian Guest, executive director of St Joseph's Health Care System.

My comments, as well Mr Greve's, will deal mainly with the implication of this bill for community-based services provided by member facilities of St Joseph's Health Care System. Please understand that St Joseph's Health Care System recognizes the need for reform of health care in the province of Ontario and is committed to the communities it is privileged to serve.

St Joseph's Health Care System was incorporated in 1991 and represents a consolidation of the health care ministry of the Sisters of St Joseph of Hamilton, which has provided health and social service to the communities in the Hamilton diocese for over 130 years. Our health care ministry is governed through volunteer representation from our communities on local boards of trustees and encompasses programs and services offered by the following member facilities: St Joseph's Hospital, Brantford; St Joseph's Villa, Dundas; St Joseph's Hospital and Home, Guelph; St Joseph's Hospital, Hamilton; St Mary's General Hospital, Kitchener.

In 1993, we expanded the board of directors of St Joseph's Health Care System to include lay representation through the board chairs of our member facilities. As you can see, we are well represented in both the long-term and acute care sectors in delivering care. Our mission reflects our Catholic values and emphasizes our respect for the dignity of all persons, regardless of age, race, religion or infirmity.

Earlier today you heard from Bishop Tonnos and Mr Ron Marr from the Catholic Health Association of Ontario as well as representatives of the Salvation Army and Jewish hospitals in Ontario. I would like to state our unequivocal support for the content of their brief. I would also request that the panel reflect on the current and historical contribution to health care in this province made by denominational sponsors when considering this legislation.

I would like to reinforce our appreciation for the recognition given by all three political parties for the ongoing role and respect for the governance of denominational providers. St Joseph's Health Care System and the Sisters of St Joseph of Hamilton have always demonstrated leadership in this diocese during turbulent times in our history. We accept the challenges before all of us and we are most willing to be a part of innovative and creative solutions.

I will now ask Mr Allan Greve to highlight a number of key issues in this proposed legislation and the potential impact on our communities.

Mr Allan Greve: Thank you, Sister Joan. In our presentation we would like to deal with four major themes, namely: (1) the voluntary governance; (2) economics; (3)

the relationship of the physicians and the hospitals; and (4) the Health Services Restructuring Commission.

First of all, voluntary governance is a cornerstone of what is right with health care in this province. Under the current system, boards of hospitals and homes for the aged are viewed as some of the most prestigious appointments for leaders in our areas where we live and as such we can attract men and women who have attained leadership roles in the places that they live and work on a day-to-day basis.

The changes as they submitted in Bill 26 range from: (1) the appointment of hospital supervisors; (2) the roles of the Lieutenant Governor in writing and dissolving existing hospital bylaws; (3) the unilateral determination of programs and services which are and will be offered by the facility; and (4) the forced merger of hospitals.

We are pleased with the amendments on the first two issues but would like to comment that the last two issues give us some concern in that these changes will no doubt have a major impact on the ability to recruit and to retain these same community leaders. The panel may wish to ask themselves if they would be willing to donate their time and services to community organizations and be compromised, perhaps, in how they would give that kind of time and energy.

You may also wish to consider how the membership and the demonstration by voluntary governors in the hospital and home boards stack up against their counterparts in the educational and municipal sectors who are elected and paid. I believe that's a very important point that this commission should consider. We feel that our voluntary board members are second to none, and any proposed legislation must surely consider the implications of this.

Economics: In this legislation there appears to be a predisposition to the utilization of forced mergers as a mechanism to achieve fiscal savings. Hospitals in Ontario have responded over the last several years to the economic realities we have faced by taking major measures to improve efficiencies and curb costs. We have, in essence, cut the cost but not the care. These include, but are not limited to, maintaining quality of care in light of reduced funded, improved inpatient utilization rates and increased efficiency through the use of ambulatory alternatives.

In St Joseph's Health Care System we have taken the leadership over the past 15 years through major things to take advantage of economies of scale in all of our facilities. These facilities, as you have seen, include a teaching hospital, a home for the aged, a health centre and a hospital that serves the broad community. Some examples of our initiatives include joint banking agreements, combined employee payrolls and benefits, consolidation of purchasing stores and matériels management, joint contracts and many, many more.

An independent audit of these services and system activities has indicated that overhead costs in the millions of dollars per year are saved and reassigned to direct patient and resident care.

Over the last years, we have expanded our horizons to include many hospitals from both the denominational and the non-denominational sector. In matériels management, for example, we currently coordinate the capital pur-

chases for over 30 hospitals in Ontario, ranging from Windsor to Kingston and from Hamilton to Kapuskasing. This is an example of the kind of innovation which should continue to be encouraged.

The mindset of the day appears to be that of forced mergers and that forced mergers are the solution to all economic woes. This is clearly without foundation in health care. The research studies both in Canada and the US do not support this finding.

An alternative to these forced mergers is the meaningful cooperation and collaboration between partners on a voluntary basis after a careful development of the business plan and firm evaluation criteria. If we look at some studies, perhaps the latest one, which has been circulated to you, of Barbara Markham and Jonathan Lomas, published in *Healthcare Management FORUM*—this recently published very important findings that mergers, when compared with other multihospital arrangements, are no more efficient in reducing costs or improving quality of care.

So I go back to this: We have many examples at St Joseph's Health Care System, ranging from contracting laboratory services in Brantford and Kitchener—Waterloo to the major collaboration effort between St Joseph's Hospital here in Hamilton and the Hamilton Civic Hospitals, both in the clinical and the non-clinical sector. Our agreement with the Hamilton Civic Hospitals was developed following full disclosure and acceptance of the collaboration policy of St Joseph's Hospital and St Joseph's Health Care System. You have a copy of that, which is appendix A. Second of all, it is consistent with the Catholic Health Association of Ontario guidelines for collaboration. This represents a dynamic model for the province, while maintaining the integrity of the key governance issues.

Let me move to public versus private sector. We feel that the hospitals are willing and able to compete with the private sector in all areas of support and clinical services, providing there is a level playing field. For example, there are currently major inequities between the funding from the Ministry of Health for laboratory services in Ontario. The private sector laboratories receive approximately 20% more funds for the same tests that are done in a hospital-based laboratory. If the government is serious about rewarding innovation in hospitals, then it must develop mechanisms by which hospitals can compete in a meaningful fashion. We have concerns that any new arbitrary powers of the minister under, for example, the Independent Health Facilities Act, could leave a significant negative impact in this regard. A process must be in place that is open and encourages competition on an equal basis.

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Let me move to physician and hospital relationships. While this is not covered explicitly in the legislation, we are aware that the government is currently involved in intense negotiations with the Ontario Medical Association in a number of fronts.

We caution the government to be cognizant of the interrelationship between physicians and hospitals and the dependencies of our communities on this stable relationship. Medical staff voluntarily contribute time to ensure

that the quality of care is not compromised, and any proposal which in effect would drive a wedge between the hospital and the physician must be carefully considered.

For example, there are current discussions between physicians and the ministry in respect of liability insurance. You heard this afternoon from the obstetricians and the chief of staff of Oakville, and while we do not wish to take sides on this issue of subsidization of this insurance, the minister needs to recognize the key role that family practitioners and obstetricians play in the provision of obstetrics in our communities and be cognizant of the potential negative impact on the ability of this care if insurance rates increase dramatically.

Health Services Restructuring Commission: One of the most significant aspects of this legislation is the formation of the Health Services Restructuring Commission. We note with approval the minister's announcement on January 17 of the proposed amendments limiting the terms of the commission, as well as certain powers of the minister, to a four-year period. Unfortunately, there are few details as to the membership or the terms of reference of this body. We do, however, have a number of suggestions for the minister if he proceeds with the commission. These include:

(1) The commission should be directly accountable to the minister for all of its terms of reference.

(2) There should be a well-defined appeal mechanism for the hospital board directly to the minister in the event that there is disagreement on any recommendations from the commission.

(3) Research and evaluation are essential components for health reform and need to be protected and utilized if we are to ensure the efficiency and the effectiveness of the system.

(4) The commission should receive a detailed orientation of governance issues, including those from the denominational providers and partners.

(5) The commission should be directed to consider briefs directly from impacted hospitals as well as from local DHCs or other bodies.

(6) Solutions to health care reform should not be limited to the traditional mandate of the local DHCs and should be opened to innovative solutions between communities and across sectors, similar to the kind of things that I was talking about between the St Joseph's partners in many sectors which have different district health councils. No community in this province can deal with all health care issues in isolation, and to this point there has been little attention given to the impact of local decisions on surrounding communities. As another example, the teaching hospitals in the Hamilton area, as many of you around the table know, have tertiary responsibilities and roles for the central-west region of our province.

(7) The commission should be mandated to study research in the United States, Canada, New Zealand and other countries on alternative models from both a quality of care and an economic standpoint. To suggest that the formation of cartels in health through forced mergers is a panacea defies well accepted business logic and research.

(8) The commission should be encouraged to challenge the health care industry to find new innovative solutions

to traditional problems. For example, academic health care networks should be encouraged to participate in solving difficult problems in rural remote communities through collaborative endeavours.

(9) A separate opportunity for debate and input on the Health Services Restructuring Commission should be conducted when the draft membership and terms of reference are established.

I just want to close by drawing to your attention one last thing: the Hospital Labour Disputes Arbitration Act. We agree with the thrust and the proposed changes to this act. However, we are concerned that, as drafted, it may not have the desired effect. Hospitals cannot be left in the middle; we cannot be the ham in the sandwich in respect to this. The government must be clear. It must have definition to what it is saying. We request then a clarification of the ability-to-pay criteria and a modification of the external comparison criteria to enable comparisons to similar private sector jobs.

In addition, we request a criterion that would require arbitrators to consider the employer's need for staffing flexibility as hospitals restructure. I think we're all aware that, consistent with other jurisdictions, Ontario's experience with the public sector price and compensation review act of some time ago demonstrated that arbitrators cherish their independence and in many cases give lip-service to legislation around ability-to-pay criteria. If the objective is to ensure that arbitrators adhere to these criteria, then all awards should be consistent with it. From the hospital's point of view, we seek that clarification. Health care is difficult to deliver in its present mode and we do not need ambiguity.

The last thing is that there is \$17.4 billion in this system. We have been promised that all those dollars would stay in the system. I guess I'm going a little further to say that I believe that around this table and in this community, the \$1 billion that is assigned to the Hamilton-Wentworth area should also be left in the envelope for Hamilton-Wentworth to resolve issues of local priorities and our needs.

I'd like now to pass it back to Sister Joan.

Sister O'Sullivan: I would like to summarize the key points raised in our brief.

First, voluntary governance: It works. Don't destroy it by minimizing its mandate. The appointment of a supervisor should only be made in extraordinary situations.

Secondly, economics: Reward efficiencies but be open to alternatives. Monopolies are not the answer. Hospitals need a level playing field to compete with the private sector.

Physician-hospital relationships: Be wary. Consider the interrelationship between hospitals and physicians.

Health Services Restructuring Commission: This body should be accountable to the minister and open to creative solutions.

The Sisters of St Joseph of Hamilton and St Joseph's Health Care System welcome the opportunity to work with our elected representatives in government and our communities to find innovative, constructive ways to reform our health care system. We ask, as others have, to be considered part of the solution and not part of the problem.

Mr Agostino: I will just take the first part very briefly and then Mrs Caplan I think will do the rest. I just want to acknowledge on the record the tremendous work the Sisters of St Joseph's have done over the years in the health care industry in this community, a 130-year record, and particularly the work of Sister Joan in her years as the CEO for St Joseph's and as well the work of the board of directors, Mr Greve, and the whole community and the diocese that has been involved in I think developing a first-class facility. The presentation today is an example of that type of leadership they provide, and again in particular Sister Joan, on behalf of the community. Thank you very much for the dedication you have given to St Joseph's and to the health care system in this community for a long, long time.

Mrs Caplan: I'll be very brief. I too would like to just acknowledge the work that has been done in Hamilton to provide a system, and to suggest that what I've heard you say today is that, with some assistance from the ministry, you really could get on and do what else has to be done on your own, to do the reallocation in the community. Is that correct? What you're saying is: "We know change has to happen. We've been the leaders in the past. Leave us alone and we'll be the leaders in the future. Don't threaten us. Don't coerce our physicians. Create a climate that will be a positive one where there can be partnerships. Don't poison the environment."

Mr Greve: Yes, exactly.

Mrs Caplan: We know—I know; not everybody knows—Hamilton has always been an example of cooperation among the hospitals and rationalization of services and good relationships between the hospitals, not only lack of inappropriate competition but real cooperation in the system's development.

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Mr Greve: I would just add a few words to that. Perhaps we might just take as proof of that our latest interrelationship, our collaboration agreement with the Hamilton Civic Hospital. There's a perfect example where voluntary governance from St Joseph's and also with the Civic can work, is working, and it provides the efficiencies, the effectiveness; it provides the interrelationship of the physicians into the system. It produces quality care at a very reasonable price. It's efficient and effective.

Mr Christopherson: I have a brief comment and then my colleague Frances Lankin will have a question. I'm sorry I missed most of your presentation. I had an urgent call to make. But I did want to also join with my colleague Dominic Agostino and acknowledge the contribution St Joseph's Hospital makes. It's in the heart of my riding. I was born there; more importantly, my daughter Kayla was born there, so I will always think the world of the staff and the management of the people of that hospital. The contribution you've made overall to health care in Hamilton I'm sure will stand the test of time as we go through these very difficult times.

Ms Lankin: I wanted to talk to you a little bit about the issue of voluntary governance. Some of you will remember when I was Health minister I walked right into this issue, when there were musings about elections of hospital boards and I didn't understand what that meant

in the area of denominational hospitals, and you very quickly educated me, if I remember.

In general on this issue of voluntary governance, not just for your own hospital but non-denominational hospitals, I can remember the current Minister of Health being very critical of me as I was trying to work in the long-term-care area and trying to end duplication at the local community level of a myriad of organizations delivering services to seniors, and we were trying to get them combined together in a multiservice agency, still with voluntary boards and everything.

I mean, this was horrid, the thought of forced mergers—I'm going to use your words—of these organizations. The minister in those days called me a person who saw no value in voluntary governance and volunteers, and undermining the role of volunteers. I want to know what changed, in your mind. I have the sense from your presentation that you're as worried about that from the perspective of this minister, forced mergers of hospitals and what it means around the voluntary governance of hospital boards, as that minister was when he was Health critic on multiservice agencies. Am I correct?

Mr Brian Guest: I wonder if I can respond to that. I think one of the significant issues that we face in all our communities, particularly in our smaller communities, is the tremendous time in defensive posture our volunteer members get put in. The reason they join the boards—and again I'll echo what Allan says. I believe the quality of people is second to none in both the denominational and non-denominational sectors. What's unfortunate now in this era of perhaps intuitive thought without business reasoning is that they spend an inordinate amount of their time defending their organization versus what they joined the board for in the first place, and that's to represent their community to deliver quality of care.

So a sound look at why people join these boards and to bear in mind that they should not be put in a position of continual reorganization, restructuring—they should be put in a position of representing their communities and determining what is best for their communities. That's why they joined in the first place.

Mrs Johns: I'd like to thank you for your presentation today. I just wanted to talk a little bit about the role of the district health council and how you view it from the perspective of the denominational sector. If a district health council had good community discussion and they came to a plan that they felt and that the community believed broadly outlined what the community wanted with respect to health care, for example, and let's say that in a particular case, obviously not in the Hamilton case, that it was suggested that a denominational facility shouldn't go on, is it your position that you would recognize what the district health council had said and abide by that and it's only the governance issue that you're concerned about, or is it the whole issue of the hospital and the consultation process?

Mr Guest: With respect, there's not much of a governance issue if the facility ceases to exist. I think the district health councils vary the same as perhaps hospitals in their ability to deal with some of these issues, and the community supports—it depends on the process which is taken. What we're asking is that the individual facilities,

whether denominational or non-denominational, be given the opportunity of direct access to present their case. The case has to be based on business logic, not somebody with a cookie cutter who says, "Well, I've got the way to do it; let's merge these places, and that must save money," and nobody has done a good analysis.

What we're saying is—I mean, there are going to be perhaps facilities where the Catholic hospital is the provider, and I would expect the non-denominational will be as thrilled about that as we are in the alternative—there needs to be direct access. I would suggest that with the district health councils, with the greatest respect—we have the joy of four different district health councils in our system and it varies. We want the opportunity, and we would suggest that all hospitals and homes, if they're involved, have the opportunity, to present our case and their case on an equal footing.

The Chair: Thank you very much, folks. We appreciate your presence and your interest in our process.

Mrs Caplan: I'd like some questions on and at the same time reference a letter from Dr David McCutcheon, who is the present chief executive officer of the Hamilton Civic Hospitals. They have said in their letter, "We believe that in our community Bill 26 is unnecessary." The bottom line in their letter, the last paragraph: "We believe, as do our partners, all health care providers and supporters in Hamilton, that we have the ability, the will, the right and the demonstrated track record to effect a made-in-Hamilton solution to health care within our region. If we are wise, you may be able to show Ontario and the rest of Canada a model for effective health care."

I'm not going to read the whole letter. We have one of the partners here at the table. We had the district health council. My question to the Minister of Health is: Why will you not permit communities which are willing to show this kind of leadership and which are willing to work with the ministry without the coercions of Bill 26 to show you what they can do? Will you delay the passage of Bill 26 to allow communities like Hamilton to become a model for the province of Ontario?

1620

ONTARIO ASSOCIATION OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The Chair: The next presenters are from the Ontario Association of Speech-language Pathologists and Audiologists: William Hogle, executive director; David Barr, president; and Fiona Ryner. Welcome to our committee.

Mr William Hogle: Thank you, sir. You had the names of the presenters today quite correct. Mr Chairman, members of the committee, my name is Bill Hogle and I'm executive director of the Ontario Association of Speech-language Pathologists and Audiologists, better known, fortunately, as OSLA. OSLA is the professional association which represents over 1,600 speech-language pathologists and audiologists across Ontario. With me is David Barr, OSLA's president. David is a practising audiologist and has been a member of our government affairs committee for a number of years. Also with me is Fiona Ryner. Fiona is a speech-language pathologist with over 26 years of clinical and management experience in Ontario. She is the immediate past president of OSLA

and has been active in a great deal of health care work, including work with district health councils.

In a moment you will be hearing from David and Fiona. Before you do, Mr Chairman, I would like to thank you and your colleagues for giving us the opportunity to present today. We appreciate the high level of public interest in your deliberations and we're grateful to be included in your tight schedule.

At the very least, Bill 26 is a huge meal requiring some time to digest, and we do commend the Legislature for its wisdom in making this forum available. It is also particularly gratifying to address such a senior panel in terms of leadership experience in Ontario's health care system, a panel that includes two former Health ministers, one of whom I had the honour of serving at one point during a 27-year career with the ministry. Indeed, Mrs Caplan, that was an honour.

Our presentation this afternoon will be non-partisan but it should not be construed as universal support for Bill 26. Rather, it's a recognition of the reality and of certain opportunities that do exist, we believe, within this legislative package to correct some long-standing system flaws, opportunities that will never be realized, however, in the absence of a political will to do so.

Communication disorders: One in every 10 of us suffers from a communication disorder. That probably surprises you. Unfortunately, it surprises most people. In part because of their invisibility, communication disorders and the treatment for them often have been poorly understood, we believe, by the makers of public policy in Ontario. Your committee can remedy that situation. I'll now turn the presentation over to Fiona Ryner.

Mrs Fiona Ryner: Let me start with some background. Speech-language pathologists are regulated health professionals with a master's-level education in their specific field. They address the speech, language, voice, fluency and swallowing needs of individuals across the entire age spectrum. Services are funded primarily by public moneys, with the ministries of Health and Education and Training as the predominant paymasters and a small component being funded by the Ministry of Community and Social Services. Clients can access service on a self-pay basis outside of institutions and have some limited opportunities for third-party reimbursement.

Speech-language services are both needed and valued by consumers. Communication is the basic medium for all cognitive functions, and therefore intact communication is a requisite for most of what individuals do. Unaddressed communication problems can therefore have substantial ramifications for both the individual and the system.

In recent years, we have experienced the first wave of what we anticipate is an ongoing trend of service reductions and eliminations. The lack of a mandate within any sector to provide speech-language services, coupled with substantial autonomy that has been afforded to hospitals and other health care institutions in managing their funds, has rendered our services highly vulnerable. While this has been occurring throughout Ontario, in the interest of time I will speak only about the greater Toronto area.

A few years ago, York Central Hospital closed its speech-language pathology service, leaving a large seg-

ment of York region without services. Two years ago, Joseph Brant Memorial Hospital closed its outpatient speech-language pathology service, leaving a service void in a portion of Halton. This translates into children entering school with unaddressed communication difficulties who are experiencing and continue to experience substantial social, behavioural and educational ramifications. It also translates into adults who do not redevelop their understanding and expression of speech and language after a stroke and whose social and vocational lives are therefore effectively ended, or adults who may lose their jobs due to severe stuttering or perhaps a hoarse voice.

The Joseph Brant closure was followed in the last year with two of their neighbouring hospitals in Halton and Peel considering major reductions in speech-language services. Consumer distress and opposition were evidenced in a public outcry in all four of these instances, but two of the four remained firm in their decision and the other two communities continue to face significant uncertainty about the future.

We have seen a growth in private services within the profession in direct response to service cuts and we therefore have a burgeoning two-tier system where out-of-pocket expenditures are no longer a personal choice but rather the only option available in some communities. Consumers call the OSLA office asking where they can access insured services. They've been frustrated in their attempts as they've pursued a desperate quest to access any degree of service possible. We have no answers, so many go without.

Without a mechanism to monitor and manage system restructuring, this erosion will escalate. Only an effective resource allocation process can prevent further and irreversible damage. Bill 26 appears to offer a damage control mechanism.

I would refer the committee to the 1995 final report of the Metropolitan Toronto District Health Council hospital restructuring committee. This report identifies 12 hospitals for closure, since amended to 11, and includes some broad references to relocation of services. This report has also identified a proposed expansion of inpatient and outpatient rehabilitation services to respond to existing shortages and future increases in need. It also projects a 0.8% increase in direct patient care providers by the year 2001.

As the committee knows, DHCs have been the minister's advisers on regional health care resource allocation and reallocation. The Metropolitan Toronto District Health Council report makes recommendations to the Minister of Health. This report has attracted considerable attention, and other DHCs will follow suit across Ontario.

As a result, OSLA has developed its position for your committee: This report underscores the need for any rational restructuring process to ensure that not a single speech-language pathology position is lost in the re-engineering of the system.

The commitment of this government to maintain health care spending at \$17.4 billion should accommodate protection of needed services. But without the development of appropriate mechanisms to oversee redistribution of funds, this will not happen.

As hospitals downsize, speech-language pathology services must be relocated to other funded community settings. Relocation options could include community health centres, children's treatment centres, public health units, shifts to other hospitals or perhaps an independent health facility. We understand that with Bill 26, speech-language pathology could be designated as a service under an IHF. We also understand that this is unlikely, because speech-language pathology is currently not an insured service. It is our intent, therefore, to let you know that OSLA believes that an independent health facility could be an appropriate alternative model for the delivery of speech-language services.

I now return to the restructuring mechanism.

Bill 26 amendments to the Ministry of Health Act identify a Health Services Restructuring Commission. We note with some concern that there is little information about its structure and function, but we also note that it will be given extraordinary power and authority through regulation and is therefore seen as the "high court" of system restructuring. To reiterate our concern that no speech-language pathology position should be lost during restructuring, it is therefore critical that our profession be represented through a seat on whatever is to become the appropriate element of this commission.

In the absence of information, the restructuring commission casts a shadow on the role of district health councils. OSLA supports the DHC process as a proven resource allocation facilitator and would recommend that DHCs remain as a key participant within the restructuring commission.

To summarize, Mr Chair and members:

OSLA believes that every speech-language pathology position that is displaced must be immediately restored elsewhere in the community.

OSLA supports the potential of Bill 26 to provide a mechanism to make this happen. In order to realize this potential, OSLA wishes to be represented on whatever becomes the appropriate element under the Health Services Restructuring Commission.

OSLA urges this government to maximize the potential for district health councils to facilitate the work of the restructuring commission.

OSLA encourages developments of provisions under the Independent Health Facilities Act to provide access for currently non-insured services such as speech-language pathology.

Thank you for your time and attention. I'll now pass the floor to my colleague David Barr.

1630

Mr David Barr: Audiologists, who are also trained in graduate school, are involved with the hearing aspect of communication disorders. We assess the nature and degree of hearing loss and prescribe hearing aids for those whose loss is not amenable to medical or surgical intervention. In addition, audiologists act as gatekeepers, referring patients to physicians when medical intervention is indicated.

Audiologists provide their services in hospitals, children's treatment centres and through other such facilities. They also work in private practice.

Under the Regulated Health Professions Act and the Audiology and Speech-Language Pathology Act, they can provide their services independently, but as they are an insured service under OHIP, they must be delivered under the supervision of a physician. Under OHIP, audiological procedures are classed as delegated acts.

There are presently 243 audiologists practising in Ontario. At one point the number was 272. This is despite the fact that the government provided funding to increase the number of graduates from four to six to 15 as of 1991. It is not reasonable to expect highly trained independent health professionals to work in an archaic system where their expertise is reduced to a delegated act.

Under the OHIP system, a physician can delegate hearing testing to a fully trained audiologist or to an untrained or undertrained person such as a secretary. In either case, OHIP compensates at the same level. While not illegal, this does raise quality assurance and overutilization issues. With untrained or undertrained people testing, significant problems are missed. Young children with significant hearing loss can have their rehabilitation delayed because they confuse the tester into thinking they have normal hearing. It also allows for the following:

An ENT surgeon can have a test performed by an untrained person in his office and OHIP pays as if it were a proper test. The surgeon can then look at the results and think, "Perhaps we need a more in-depth assessment," and refer the patient across the street to a hospital-based audiologist, where a second test is performed, this time an accurate one. OHIP is again billed, and the ENT, actually having been paid for the first test, can receive part of the second OHIP payment if he is the "billing physician" for the hospital audiology department. So not only did we overutilize, not only did we pay for a test that wasn't accurate, but we rewarded the physician, because of the present system, for this situation.

Some months ago a Toronto Star article quoted the executive director of the Canadian Hearing Society as saying that it is "not uncommon to find that surgical decisions are made on the basis of invalid test results." Another official was quoted as saying, "Incorrect testing done by untrained workers leads to repeat testing and costs the health care system far more than it needs to."

But our complaint's not with the physicians; it's with a system that is corrupt and ripe for abuse. It's a long-term problem that I've personally been involved with on OSLA's government affairs committee for over 10 years.

Many years ago, in less sophisticated times, a physician would have a technician perform a simple hearing test. The physician would interpret the results and counsel the patient. However, for many years, audiologists trained at the graduate level have been the acknowledged experts in the area of hearing assessment and rehabilitation. The formal training of an ENT surgeon in hearing assessment is necessarily rudimentary, and what training exists is provided by audiologists. The physician under the OHIP system is then expected to supervise an audiologist? This is quite inappropriate.

Some time ago Health ministry officials suggested that the solution to these difficulties may lie in using the Independent Health Facilities Act for the provision of

audiology services. OSLA believes that through a standalone IHF for audiology, standards could be established and monitored which would result in safer, more efficient and less costly service delivery. OSLA would of course be pleased to assist in the establishment of such standards.

Until now, however, no government has shown the political will to move forward. It is our understanding that Bill 26 was intended to correct this problem, and accordingly we applaud this initiative, but there are some issues that may require further attention.

Bill 26 amends section 4 of the Independent Health Facilities Act to enable the minister to "designate health facilities or classes of health facilities as independent health facilities." An amendment to subsection 5(1) permits the minister to authorize the director to request one or more proposals. These amendments do appear to provide for the creation of new audiology-based IHFs, and if so, we are heartened.

Subsection 7(1) of the act is also amended under Bill 26. This would permit "a person who is operating a health facility on or before the day the facility is designated as an independent health facility under clause 4(2)(b) to apply to the director for a licence to operate the health facility as an independent health facility." This sounds like Monty Python to me.

It is our understanding, however, that "the person" applying to run an existing IHF in subsection 7(1) as amended would be the physician instead of the audiologist. If this is the case, an existing audiology clinic would not qualify as a standalone non-physician IHF. In other words, I have a clinic now that I own and operate, but under the rules of OHIP the bills go through a physician I'm associated with, and under these amendments it's he who would have to make the application for the independent health facility and I'd still be paid through a third party. I urge the committee, in the strongest possible terms, to correct this oversight.

In summary:

OSLA believes that overutilization, an inappropriate reimbursement mechanism and lack of adequate quality assurance have resulted in a badly flawed audiology system.

OSLA believes that the non-physician IHF model offers an opportunity to solve these problems.

OSLA urges the committee to ensure that the IHF Act contains the provisions necessary to ensure that both new and existing audiology clinics are eligible to become IHFs.

Mr Chairman, perhaps you or your colleagues have questions resulting from what you have heard from us.

Mr Christopherson: Thank you for that presentation. It was quite informative. In listening, one gets the impression that you're really just floating out there in the system somewhere and not really anchored in the way you'd like to be, both in terms of lack of standards and the fact that you're not on the insurance schedule. If I'm reading it correctly, you've probably got every reason to be even more concerned than some of the other stakeholders in the health community, given that they at least are rooted in existing legislation and now are concerned

about changes. You're looking at changes that are happening and at the same time trying to get rooted, if I'm understanding correctly; if you get a sense I'm not, please help me out.

I don't know an awful lot about this. What is the worst-case scenario for you as you see Bill 26 in its current form? What's the worst that could happen to you, your colleagues and your respective professions?

Ms Ryner: The worst-case scenario right now that the speech-language pathology profession is facing is that with the potential for cutbacks and restructuring and the authority Bill 26 carries in terms of making some of these things happen, our services could just get lost in the process and there could be no services to communities, unless there's also the mechanism to ensure that they are relocated elsewhere.

Mr Barr: The worst-case scenario from the audiology perspective is that the government would do nothing. Even though as audiologists we do have a college and have quality assurance built into our practice, as it happens under OHIP, that isn't necessarily so. Next to the worst-case scenario is that they designate audiology under IHF but only allow the physician to apply to run the IHF. 1640

Mr Clement: Thank you very much for your presentation. Your comments are close to home, because one of the facilities affected on the speech pathology side is in Brampton's Peel Memorial Hospital, so I've been very aware of that issue.

Dealing first with the speech pathology side, I think what we're hearing is that the restructuring has to allow for new types of services to occur, which is another reason this restructuring has to take place: that we're spending money in an ill-fitting manner; that some services are not really necessary but we're spending money on them, yet there are other services for which there's a crying need but we don't have the resources. It's possible that if we do our jobs properly, as a government and as a health care sector, we can find the money to reallocate into such worthwhile things as speech pathology. Is that one of your hopes as well?

Ms Ryner: I would agree with you. Many people agree that there's enough money in the system; it's how it's being allocated at this point. The difficulty for us is that currently, for example, preschool services are in acute-care hospitals. They are trying to balance the bottom line, and they have to save lives and do cardiac surgery and all these wonderful things, so they see an opportunity to balance their bottom line by eliminating services such as ours. That money is then swallowed up within that hospital environment and there's none to reallocate elsewhere.

Mr Clement: Could I maybe provide a clarification and make sure this makes sense to you? You made a very poignant point that there is still a role for the district health councils to play. Under our proposed legislation, the district health councils' position to analyse, to plan, to make recommendations is still intact under section 8.1 of the Ministry of Health Act. If that is the case—I encourage everyone to read the original Ministry of Health Act—that the district health councils are still in place and would have that interaction with the Health

Services Restructuring Commission, would that go some ways to alleviating your concerns?

Ms Ryner: It would, but with all due respect, they currently don't have enough clout, if I could use that word. They can still very easily be overly dominated by the large institutions in their communities.

Mrs Papatello: You were sounding fairly positive when you began. Have you been given assurances from the ministry that you'll be included? Have you had consultation with the minister?

Mr Barr: We've had no consultation with the minister. We've had consultation with people within the ministry, but nothing from the minister proper.

Mrs Papatello: I'm hoping you're going to make representation to the Ministry of Education and Training as well and to the Comsoc ministry, in terms of your position. In light of the \$400 million being cut from education, have you heard of a definition of "classroom" yet? The role you play with students, and I'm talking specifically of children's services—yours is one of those services children need; it is critical to get them at that early age because so much of it is treatable when you're allowed to intervene. The cuts that are coming in education I'm fearing will specifically affect your area because you won't be considered "classroom." I wonder if you've heard about that definition, because I would think that would be of grave concern to your field.

Mr Hogle: I'm not familiar with the definition to which you refer. However, we are very familiar with the problem you're addressing, that is, the problem of services within the educational system for speech and services within the health system for speech.

One has to recognize that speech pathology means something different and is treated in a different fashion in education than it is in health. Health is a medical model; education is a language model. Our association will be providing what we're calling the OSLA report, and that report we expect will provide government, education and health with a tremendous opportunity to rationalize these services. But your point is a strong one. Indeed, Fiona addressed it when she talked about the lack of mandate. That lack of mandate is across the system, not just within health.

Mrs Caplan: Mr Chair, I have a question for the record, and it follows on the very excellent presentation. It is a question to the ministry. Since the Ontario Association of Speech-Language Pathologists and Audiologists would like to know whether it is the intention of the minister and the ministry to include audiology and language services in independent health facilities under Bill 26, could the ministry give us and them the information about whether it is their intention to provide those services? Particularly—and this is also for the record and part of the question—what we heard today is that hospital-based services are being cut because of the \$1.3-billion in funding cuts. Is it the government's intention to fully fund audiology and speech-language pathology services in independent health facilities as an insured service? It's important that they give us a time line as well, because what we've heard today is that vital and important services are being cut and decisions are being made that may be irreparable unless the government moves quickly to do that.

The Chair: Are you finished with the question or statement?

Mrs Caplan: It's not a statement; it is a question. You see, we haven't had any policy statement from the ministry that this is the intention. It's my own view that they could do that without this bill. Just by declaring your services insured services, you could then be funded in numerous settings, so you don't need Bill 26. But is that the rationale, is my question, for the delivery of services to the hearing-impaired and to people with speech problems?

The Chair: The question has been put. Thank you very much, folks.

Mr Agostino: Mr Chairman, just for the record so the committee's aware of three other groups that made presentations at the shadow hearings today: Tona Mason, an individual, made a presentation; Doreen Brown, on behalf of the Hamilton Senior Citizens Centre, and I'd like to table that brief; and one from the Ontario Nurses' Association. These briefs were presented to the shadow hearings held in the convention centre today, and I would like to give this to the clerk of the committee for reference and for conclusions of committee deliberation.

Ms Lankin: Mr Chair, I've got a question and I need your help. I'm not sure; it may be directed half to Mr Clement and half to the clerk. It may be that they have to come back to me with an answer.

I was just on the phone to staff in our research, talking about the amendments you've tabled. I've been trying to get some information and some research work done on them. In fact, there was a commitment made to folks in Queen's Park that the clerk's office would file the amendments with the appropriate research staff while we're on the road. They have not received the amendments yet. The reason they've been given from the clerk's office is that the clerk's office is still busy sorting the amendments to ensure that the package they deliver to opposition party staff has the amendments that have been tabled so far, and they indicated that more will be tabled on Monday. I had understood that in fact you had tabled the entire package.

I recognize that that may not be the case with the other committee; I don't know. You may know that information, but I just wanted a clarification from you. If you think all the amendments have been tabled in both committees, could you, Mr Chair, through the clerk, see if we could sort this out? I'm at a grave disadvantage.

Mr Clement: I do have some information.

The Chair: Out of respect for the doctor who's here, can we sort this out after we hear our presentation?

Ms Lankin: I'm just wondering whether some work could be done on that while the presentation's going on. I don't want to take up any more time, but I indicate to you that that research work needs to be going on or I won't be able to provide you with my amendments in light of what you've just tabled.

The Chair: But the answer to that can come after we've heard from our last two presenters.

Ms Lankin: Oh, yes.

The Chair: We're already late. Mr Clement, I presume, will work on that.

1650

DR RANDY ZETTLE

The Chair: Our next presenter is Dr Randy Zettle.

Dr Randy Zettle: Good afternoon, Mr Chairman, ladies and gentlemen of the committee. Thank you very much for the opportunity of addressing you this afternoon. I present to you as a physician who has practised in the province for the past nine and half years. I practised five years as a family physician and four and half years as an emergency room physician.

I work in Brampton, in Peel Memorial Hospital. In 1995, our emergency department saw approximately 64,000 patients. Of those, approximately 9,400 required hospital admission. The admissions through the emergency room accounted for approximately 38.8% of all hospital admissions in 1995.

In my presentation I'm going to use examples relating to family practice and emergency medicine, because those are the areas about which I have personal knowledge. There are three issues I'd like to address with you this afternoon relating to Bill 26. The first pertains to schedule H, section 12, proposed sections 18 to 18.2, that deal with the payment of accounts and repayment for unnecessary services. The second is schedule H, section 11, proposed section 17.1, that contains the provisions that would allow the minister to set and adjust fees and impose thresholds by regulation. Finally, I'd like to address the issue of the use of the Rand formula by the Ontario Medical Association.

With regard initially to section 12, sections 18 to 18.2, it appears that the drafters of these sections intended to protect OHIP and therefore the taxpayers of Ontario from bearing the costs of unnecessary medical services. In the furtherance of that objective, I think this is a very laudatory and necessary section and I have no problem with it the way it's drafted.

However, I believe section 18.2 may produce unfair results. If you recall, section 18.2 is the section under which a physician who orders a service that may be considered not medically necessary may later be required to pay back the costs of that service he ordered if it was provided. I believe that unilaterally penalizing the ordering physician for requesting a service that is not medically necessary would be unfair.

The decision to order either an investigative or a therapeutic service is made jointly between patients and physicians. In addition, the physician, the practitioner or the health facility that provides that unnecessary service cannot be said to be entirely free from blame either if it's provided. Under these circumstances, to require the ordering physician to bear the cost of that service I believe would be most unfair. As a result, I urge you to delete section 18.2 in its entirety, as written.

The second issue I'd like to address with you is section 17.1, the section that allows the minister to set fees, adjust fees and impose thresholds by regulation. I believe section 17.1 is necessary, based on three considerations. The first is the elimination of the medical malpractice insurance premium reimbursement. The second is the number of inequities that exist in the current schedule of benefits that I believe are contributing to the maldistrib-

ution of physicians and patterns of practice of physicians in this province. The third is the issue of utilization of our health care system.

First, let us consider the elimination of the medical malpractice reimbursement. I believe it is an important step to eliminate the medical malpractice insurance reimbursement program. The arrangement as it's structured I believe operates contrary to public policy. By reimbursing physicians in a blanket fashion for any increase in their malpractice insurance premiums relative to a base rate, you in effect insulate them from the financial consequences of their actions in professional practice. When you do this, any deterrent effect of the tort system is thereby greatly reduced. Under the reimbursement program, physicians are not forced to bear the risk of malpractice insurance premium increases, irrespective of how they practise.

However, as a corollary to that, physicians who provide high-risk services who are now faced with higher malpractice insurance premiums have to be adequately compensated so they can now pay those higher premiums and still make a reasonable profit if they're going to continue providing those high-risk services.

In Ontario we compensate physicians on a fee-for-service basis. Therefore, it would be necessary to increase the fee for those high-risk services. Services that would be considered high risk would be the delivery of babies, either by obstetricians and gynaecologists or by family physicians; certainly orthopaedic surgery and fracture management; heart and vascular surgery; brain surgery; or assessing and treating patients in emergency departments.

I believe that the enactment of this section in Bill 26 will ensure that the government has the power to adjust the individual fee codes. A good example is the POO6 code, the management of labour and delivery code, which compensates family physicians and obstetricians for delivering babies, in order to adequately compensate the practitioners who provide these high-risk services to ensure that they will continue providing these services for the residents of Ontario.

A second issue I'd like to address under this heading is the number of inequities that exist in the current fee schedule that I believe play a significant role in adjusting physicians' patterns of practice.

Firstly, let's consider two examples: If a 50-year-old man presents to his family physician with a cold, that physician will be paid \$24.80. If at 10:30 on a Friday night that same man now presents to the local emergency room with chest pain that might well be a heart attack, the emergency room physician gets paid \$1.75 more. He gets \$26.55 for treating that individual. This difference, \$1.75, certainly does not compensate the emergency physician for treating a much more serious, difficult and time-consuming problem associated with a far greater medical malpractice liability, at albeit a most inconvenient hour. An emergency room physician's annual medical malpractice insurance premium, the 1996 rate, is \$4,332. A family physician's is \$1,932. The emergency room physician's premium is 124.2% higher.

Let's consider a second example: Assume we have a very complicated medical patient. If they present to their

family doctor in the office, that doctor would perform what's termed under the fee schedule a general assessment, an A003 code, for which he would be paid \$48.20. If the following day the patient was still not feeling better or was dissatisfied with the previous treatment, they could then telephone one of the many house call services which are available in the urban centres and a physician would attend at their house to deal with their problems and assessment. The house call physician would be paid \$54.95. If that evening the patient then went to the emergency department for assessment, the emerg physician would only get \$26.55. So the family physician gets 81.5% more and the house call physician gets 107% more for seeing this same patient.

There are a couple of other examples which I have listed in my brief for your reference at pages 8 and 9.

In light of these inequities in the fee schedule, is it any wonder that few people are willing to practise in a low-volume emergency room in rural Ontario? Clearly, it's far more lucrative to practise in a high-volume urban area. Essentially, you can see patients who are basically well in your office and those who are potentially seriously ill you can send to the local emergency department.

In addition, under the fee schedule, as an office-based practitioner, you can bill for additional services. If we take our 50-year-old man, if he presented to his family doctor with chest pain, if the family physician performed and interpreted an electrocardiogram, the family doctor would be additionally compensated for reading the electrocardiogram. There's a code for that, G313, and the fee is \$8.90. However, in the emergency department, interpreting the electrocardiogram is considered part of the base fee, \$26.55.

I believe the Ontario Medical Association, in conjunction with previous governments, has not rectified these inequities in the fee schedule, and these that I present are just a sampling. There are many, many more. I believe that it is only by enacting provisions such as section 17.1 that provide the minister with the power to set and adjust individual fees and impose thresholds where appropriate that these types of inequities may be corrected and any resultant adverse effect on physician practice patterns removed.

The third issue I'd like to deal with under this heading is the issue of utilization. Clearly, both physicians and patients are important in determining the utilization of the health care system. However, the problem I'd like to address with you is that there are a small but significant number of family physicians who are seeing large numbers of patients per day. In British Columbia it's been estimated that about 5% of family physicians see 50 or more patients per day, and I can see no reason why the numbers in Ontario would be any different.

The question I ask is, is the public being well-served by being churned through a physician's office in this high-volume fashion and would all of these services withstand close external scrutiny? In a recent article in the Medical Post, the president of the British Columbia Medical Association was quoted as saying that doctors seeing many patients a day were "pushing the envelope on quality."

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I believe that section 17.1 is very important in that it will let the minister impose reasonable limits on the number of services that are provided by practitioners. As well, the other provisions in schedule H will allow and provide the government with the ability to more closely monitor the provision of services and the billing practices of physicians.

The final issue I'd like to address is the Ontario Medical Association's use of the Rand formula. I believe that with the enactment of Bill 26, the Ontario Medical Association's ability to use the Rand formula to collect membership dues in the absence of voluntary membership should be discontinued. The OMA should be a voluntary association which members of the profession can join and support with dues if they wish. The OMA is not a professional regulatory body, it is not a licensing body, it is not a medical malpractice insurer and it is not a trade union. I believe that the OMA should recruit members and collect dues like other voluntary professional associations. It should not be given preferred status through the use of the Rand formula.

Once Bill 26 is enacted, I believe that it would be punitive to continue to allow the OMA to demand annual fees of \$900 for an ordinary member at 1996 rates from the physicians in this province. I also believe that if the Rand formula persists, this will engender a significant amount of ill will and ill feeling between the physicians of this province and the current government.

It's my impression that the OMA performed much better in an advocacy role on behalf of physicians prior to the introduction of the Rand formula. I suggest to you that the Rand formula should be discontinued. If the OMA then performs well in its advocacy role, physicians who want to join and support the association and be a part of it will. However, this should be voluntary on the part of the association. Physicians should not be forced to fund an association to the extent that the OMA is currently being funded. To that end, I ask that you give serious consideration to including a provision in Bill 26 that would revoke the OMA's continued use of the Rand formula.

These are my submissions.

Mr Clement: Thank you, doctor, and for my colleagues opposite, Dr Zettle practises in Brampton, and now you know how I was created, with such very good, commonsensical suggestions from the good doctor.

Interjections.

Mr Clement: I just thought I'd give it a try.

Just to flesh out the record a bit on one particular issue, because I think we have addressed that, Dr Zettle, today in our proposed amendments, in your dealing with section 18.2 and the previous legislation's preference to have a general manager make the first decision as to whether a service is medically necessary, we have now altered and improved that section so that the general manager is required to consult with the Medical Review Committee, with at least one physician representing that committee, and to abide by the arrangements that have been worked out with the OMA and the CPSO. If that amendment does come to pass and is voted to be

included in this bill, would that go some way to alleviating your concerns in that area?

Dr Zettle: I just want to make sure we're talking about 18.2 and not 18(2). Subsection 18(2) is the one that says that the general manager, if he has reasonable grounds, may refuse to pay all or part of the service that's not medically or therapeutically necessary.

Mr Clement: That's what we're talking about.

Mr Zettle: It was my impression that not medically or therapeutically necessary, the guidelines in respect of that would have been put together through some combination of physicians and government officials.

Mr Clement: Well, yes. What's happening now is that it's a judgement essentially of your peers. There's no definition. It's hard to define, as you can well imagine, but it would be a decision of your peers, rather than a decision exclusively of the general manager. If that is in fact how this legislation is amended, if that amendment passes, does that go some way to alleviating your concerns in this area?

Dr Zettle: Just to clarify the record, I didn't have any concerns about subsection 18(2), because I think that under subsection 18(2) having a group of my peers establish guidelines when we're talking about refusing claims that are submitted at first instance would be an ideal situation. But under 18.2, as I read the provision, this is where the doctor orders a service, it's then provided, it's then termed to be not medically necessary and then the doctor is required to pick up the cost of his service that was provided. Under those circumstances, there are really three parties involved in the decision to pursue the unnecessary service and it would be unfair to penalize the person who ordered the test.

Mr Clement: I think we've met your concern, but I thank you for raising it again.

In terms of the malpractice insurance premiums and your suggestions in that area, we heard an earlier presentation today where we had a bit of a discussion about whether differential fees for service could be used to alleviate, as you have made mention here, the premium cost in certain areas: neurosurgery, obstetrics, what have you. There was one claim by a doctor—he did not issue it as a threat, and he made that very clear, but he did make the claim—that that could provoke job action by your brethren because the differential fees would create some internal dynamics which he did not predict would end amicably. Do you share the same fears, or is that overblown?

Dr Zettle: That's a very difficult question, because when you're dealing with a capped global funding model, when you increase the fees to compensate those people who provide high-risk services, it has to come at the expense of somebody else. It should come at the expense of either people whose fees are currently overvalued, where the experience, time, skill and the malpractice risk to provide a service is excessive vis-à-vis the fee in the fee schedule, or people who provide high-volume, low-risk services. If we're going to serve the population of Ontario, there has to be some adjustment within that.

In terms of other people's considerations of job action, I haven't heard anything to that effect.

Mrs Caplan: Thank you very much for a very interesting brief. It's very different from any of the ones that we've heard from other doctors.

Mrs Pupatello: Different from all the ones.

Mrs Caplan: My colleague says, "Different from all the ones."

Mr Agostino: Tony liked it, though.

Mrs Pupatello: Dr Clement enjoyed that, yes.

Mrs Caplan: While there were some in support of significant reform and change, yours is the first one that actually says you believe the minister should have the power unilaterally to be able to make these changes. I'm wondering why you reject the option of partnership.

Dr Zettle: I guess my experience in nine and a half years is that we've had a partnership, and here's where we are today. I don't see how you can effect the types of changes that need to be effected in a true partnership arrangement, given that in the nine and a half years I've been practising, these fee schedule inequities have been present and still persist to the current day. I think it would be prudent to accept input from the physicians and from their representative bodies, but ultimately I think somebody has to make the hard decision to adjust the fees. And I think, as Mr Clement mentioned, it's going to be unpleasant for some people. You may have threats of job action. Who knows what other threats people might make. But in terms of making the hard decisions, somebody has to make them, and I don't think in a partnership arrangement they'll get made.

Mrs Caplan: CMPA: I was a part of the government that agreed to the OMA's suggestion that part of the payment of the insurance premium would be in lieu of an increase to the fee schedule. I think the decision to unilaterally change that without negotiation and discussion is offensive, but it also raises the issues that you have raised of obstetrics and anaesthesia and orthopaedics, which have very high premium increases and where, particularly on obstetrics, although the minister has said he's going to do that, by not solving it first or saying exactly how it's going to be done, my concern is that if that's the style of how things get done, doctors will not feel appreciated and secure and that insecurity will have an impact on patient care. Do you have any comment on that?

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Dr Zettle: I guess my feeling would be that if something was done, if in the near future the obstetrical fee code was suddenly raised to say, "We acknowledge that you're now facing this burden of higher malpractice insurance premiums," if as a result of this bill the claw-back was eliminated, I would find it difficult to see how people could complain about that situation. If you're saying, "I can't provide the service because you don't pay me enough because my malpractice is so high," and somebody says, "Well, that's okay. I will now compensate you so that you can have a reasonable return to cover the increased costs because we value that medically necessary service. It may be high risk, but we as a society want to have babies, want to have doctors attend on the delivery of babies," I would find it difficult as an individual to argue against that adjustment.

Mrs Caplan: The last question I have is regarding Rand. My own position was that if the Ontario Medical

Association wanted to become a union, that was their right, and that they should have gone through a certification process. Rather than having the government arbitrarily take Rand away, would you favour the possibility of allowing the membership to apply for decertification, or do you think it should just be taken away and start the certification process all over again if that's what the membership wants?

Dr Zettle: I think it should be just taken away, and if the membership wants to apply to be certified, then by all means let them go ahead. Right now the fees strike me as being quite high. Certainly it's a significant amount of money that's involved annually. I think that if the membership wanted the OMA to represent them, if the physicians in this province wanted that, then they could then apply for certification. Then if the certification went through, so be it; then the Rand formula would be in place as opposed to having it imposed as part of an agreement.

Ms Lankin: I've commented on a number of occasions that every day something new is brought up, and here we are in the second-last public presentation and, I have to admit, I've been waiting for the Rand formula to be brought up. I was chuckling to myself as you did it, not in terms of the issue but just that at some point someone was going to have to realize that the government was stripping the OMA of its rights and role in terms of bargaining, which is one of the many things the association did, that someplace in the membership someone was going to say, "So why are we paying dues in a compulsory fashion?" So this doesn't surprise me.

I'm sort of interested—the OMA representatives that were here have gone, so they haven't heard your plea. Someone better give them a call and tell them in case the government's busy writing amendments over the weekend. They might want to comment on it.

I really appreciate your presentation. I'm kind of a detail person and you've raised a lot of issues that are important in terms of the inequities, and I think you're quite right that it has been very difficult to get at that. I'm not sure myself that the minister having the unilateral right to do these things is going to fix the things that you're raising, but who knows? We'll see what happens with that.

What I would like to ask you about is your comment about the BC process of dealing with high-volume doctors, and I preface it by saying that a lot of doctors who have come forward have said: "Yes, there are some in the system, but don't penalize all doctors for the some. Deal with the some." They've also pointed out high utilizers of the system in terms of patient abuse as well.

One presentation told us about a project in Manitoba where 100 people who used the system, an extraordinary—in fact, the numbers they gave me I couldn't quite believe; you'd have to go to three doctors or two doctors a day every day of the year to get these numbers. But they dealt with those people and essentially rostered the individuals to a doctor for their care and brought the utilization way down.

I was thinking, between that and if you could explain to us a little bit more about BC, maybe this is a reasonable thing to look at to try to deal with the extremes in

the system that we know of instead of fixing the rules that affect everybody when most patients and most doctors are not the extreme.

Dr Zettle: First of all, in dealing with it, I agree with you that it probably is only a very small percentage, but the problem is that when you're dealing with a small percentage in terms of the large amount of moneys that are involved in health care, you start to deal with quite significant amounts of money. So to not address it because it's only a small percentage I think does it a disservice.

As I understand the BC issue, what they did was there was a province-wide referendum by the BCMA and the majority of their members approved limiting full fee-for-service payments for office visits for the first 44 patients seen per day, and then for the 45th to the 62nd basic office visit, fees would be paid at half the basic rate. For any visits beyond the 62nd per day, nothing would be paid.

Ms Lankin: It's interesting in terms of that approach—and I agree with you about the amounts of money. This Manitoba study suggested that those 100 people were actually utilizing 1% of the Manitoba health care budget, which is again extraordinary numbers.

One of the questions I have in that, and this is something people would have to work out, is I had an experience myself attending a specialty practice. I'd been referred there and had to go for a number of visits. This particular physician was a high-volume physician—I recognized that quite quickly—who scheduled four people every 15 minutes into different rooms and went in. I don't think that's the majority of practice, but that's the case. If you cut it off at 44, say, or you did the threshold, someone like that who actually chooses to practise that kind of medicine might well still just do their four patients every 15 minutes and, yes, they lose money and they stop seeing people for that period of time but they don't necessarily expand the amount of time they spend with each patient. I don't know if there's a way for us to get at that issue or not, but this is a very innovative suggestion. I know there's never a perfect answer. Do you have any thoughts on that?

Dr Zettle: In the review I read on the BC issue, their referendum was based on family physicians, not specialists, and they raised that issue. They didn't know how to deal with that. I don't know the answer to that, how you can force people to spend more time per patient. If somebody's in the habit of spending only six minutes per patient and you're going to try to force them to spend 15, I don't know what they're going to do for the other nine minutes. So I don't know the solution to that problem.

The Chair: Thank you, doctor. We appreciate your presentation and your interest in our process.

Mr Clement: Mr Chairman, I would like to table for the benefit of the committee some answers to various questions that have been raised by members of the committee, from the ministry.

Mr Agostino: Mr Chairman, as well, I want to table further information on the community shadow hearings. First of all, a list of the panel members: Rev Peter Hoyle, the chairman; Tom Atterton; Marsha Baker; Denise Brooks; Marvin Caplan; Brian Charlton; Mike Davison;

Andrea Horwath; Norma Laforme, and Marlene Thomas-Osbourne served on that panel today. A letter from Rev Hoyle to the committee—the chairman of the shadow hearing committee—after deliberations today, and a petition signed by over 400 people urging the government to withdraw Bill 26. I'd like to table these with the committee today on behalf of the shadow hearings that were held in the convention centre.

BARBARA SULLIVAN

The Chair: Our last presenter is Barbara Sullivan. The floor is yours. Questions, should you leave time for them, will begin with the Liberals.

Mrs Barbara Sullivan: Thank you very much. I'm pleased to be able to be with you today, as a former legislator and now as a citizen, to raise some of the issues that I find troubling about Bill 26 and that I hope this committee will take back to Queen's Park as matters where there is some urgency for change.

There's no question that medicare as we see it today is very different than it was when it was first introduced, and those changes have brought significant benefit to people right across the country. The major area, however, in Ontario where we lack skills and talent and support is in the health information technology field. That is what I'm here to address with you today, and to caution members of the committee about proceeding with any areas of this bill, including those which have been amended, governing health information without the context of a fully developed policy, implementation strategy and full and frank input and understanding from the public.

There's no question that Ontarians want first-rate health services that bring them the finest, the most effective and the least intrusive care, alongside a commitment from providers that such care will be delivered in a cost-effective way. People believe their taxes and their employer contributions should be spent wisely. They know that duplicated X-rays or unnecessary return visits to professionals add to costs but not to their own health.

But despite the sophistication of health services which are being provided, we're not using modern technology to plan health care for the future, nor to evaluate that which is being provided today. As patients, we know that hospitals, doctors and others in the system have bits and pieces of our health records, but there's no one place where a full and secure record exists and we don't know the cost of the service that we've used.

Repetitive studies have shown that our senior citizens are overmedicated, frequently because health care providers don't know what other drugs have been prescribed or what non-prescribed drugs are being taken. Hospital admissions based on negative drug interactions are astonishingly high in our seniors population.

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In emergency situations, professionals frequently lack basic information: names of substitute decision-makers, allergies, pre-existing conditions and other essential information about the patient for whom they are providing care.

We are also told that many people are using our health care system when they are not eligible to do so. I was

amused at the minister's use of a figure of \$65 million in fraud in his opening remarks to this committee, because less than two years ago the same minister, albeit in a different role, claimed that there was \$700 million in annual spending lost to fraud by patients and practitioners. Around the same time, I point out to you, the then deputy minister suggested that perhaps \$16 million was more likely to be the extent of annual fraud costs in the system.

I believe that members of the committee ought not to be fooled by any such claims. They are guesstimates or risk projections at best, and fearmongering at worst. There has been no appropriate study ever conducted on the extent of fraud in the system, and one only has to look at the results of enforcement efforts to conclude that such claims are faulty.

None the less, I do believe people must be assured that the tax dollars they pay for health care are expended appropriately for eligible residents, and that charges to the system which whether by accident or design are not legitimate are eliminated. In fact, the technology is not in place in OHIP or in other parts of our health ministry which enables that appropriate tracking, and so our system is relying on anecdotal reports to uncover deliberate misuse of the system.

I believe that in the health information area there are many other issues. Practitioners often aren't able to track clinical changes that have taken place because they work in a multidisciplinary and multilocation environment. Physicians are often unaware of diagnostic tests which have been conducted and may well order duplicated tests.

The tracing of physician practice patterns and treatment modalities which can lead the profession to optimum clinical practice guidelines is inadequate. Research, whether it is epidemiological, utilization or outcomes research, is hampered by the lack of accurate data, and future health planning is therefore hindered.

From an administrative and management point of view, comparative costing of services is cumbersome at best and non-existent in most instances. At the management level, too many opportunities are missed in inventory control and in billing and payment systems. For the patient, there is no information on the value of benefits received under our medicare plan.

I think it is important to understand that this has been a bit of a hobby-horse of mine. Some of you have heard me speak in the past about the need for an information system that can bring and maintain a secure patient record, that can help us with the administration and management of health care, that can help us evaluate services that are provided and ensure that the most effective are used, and that can help us plan so we have the right facilities and people in place to deal with our health care needs.

The technology elements are relatively straightforward. I am going to skip those because there are other elements that I believe are more important for us to consider.

The private sector has moved well past the public sector in information technologies, and it is clear that there is significant private sector interest in assisting government to strengthen health information systems or to provide and manage a new system. Small steps which

have been taken today, while laudable as introductions, are unconnected and not systematized. We can look at the Largenet project in London, the pharmacy network, the laboratory network, and what is perhaps the most sophisticated use of information technology to date, that which is applied in the cancer treatment centres.

But the technological questions, the ability to do the job, aren't the only ones that should be pursued. The ethical issues of access to and uses of material from a health information system must be addressed in an open way to ensure that there is accountability in the system and that patients' and providers' rights and obligations are protected and defined.

By including amendments in Bill 26 which would allow broad powers of access by the minister and the authority to distribute information as he sees fit, I believe the minister has seriously jumped the gun and I believe has really created an impediment to a properly conceived and developed health information system. Furthermore, the amendments affecting medical and therapeutic records in the bill are inconsistent with various standards applicable from one act to another act. I should tell you that while I have only seen the news release with respect to the amendments the minister put forward today, my view continues to be that action should not be taken on these particular amendments at this time.

I want to put to you some of the questions—I happen to have 20 in number—which I believe should be answered and the public has the right to ask, and the public has the right to participate in the formulation of the answers to these questions.

The first question is, who owns the record? The Public Hospitals Act says that the hospital owns the record of procedures which took place in the hospital. Under the common law, different conclusions have been reached, but only a portion of the broader question has ever been answered.

The second question, who has the right and the responsibility to add or delete data in a record? What information does a patient have a right to refuse access to by health professionals, providers or facilities? Why does some of our legislation require patient consent for disclosure, other legislation provide a possibility for patient consent, other legislation deem consent and still other legislation ignore the question in total?

What health care professionals, providers and facilities should have access to a patient's full medical record?

What health care professionals, providers and facilities should have access to a portion of a patient's full medical record? What are the defining features in providing that access? The professional scope of practice, the therapeutic service delivery, or are there other factors?

What information should OHIP be able to access about a patient? The basic information to determine and verify the eligibility, or a full medical and health services record?

What research agencies and institutions should have access to particular fields of information without patient identifiers?

What is the right of the public to the results of such research?

What information should be transmitted to patients about services provided and the costs of those services?

What steps are necessary so that information remains confidential to the specific patient? I suggest to you that the right of a parent to information concerning health services provided to a minor child is but one area that will be a matter of important discussion if the government ever decides to send a patient an accounting of the value of services which have been offered to that person.

What information should be transmitted to OHIP for billing purposes by the practitioner, the provider or the facility? If electronic funds transfer for payment is contemplated, what information should be attached to verify the account?

What steps should be taken to develop a protocol for recording consent of patients to treatment, or to specific searches for organ and rare blood matching, or for organ donation, or for identifying substitute decision-makers in case of incapacity?

What protocols should be put into place for the use of specific data recorded about a health care provider such as might be used in identifying physician practice patterns or for professional disciplinary measures?

What should be the pace of implementation, and how are priorities for implementation to be addressed?

What verification data should be used for security purposes? Fingerprints, DNA screens, numbers?

What would be the nature of contracts entered into with the private sector for providing health information technologies, and what would be the provisions for ensuring the confidentiality of information included in whatever system is developed?

What use can or should be made by medical schools in accessing specific cases and specific records for teaching, continuing education, research or for distance education?

What scope should be included in a system for remote diagnosis or remote surgery—which is technically possible—and how are liability issues to be determined?

What responsibility should be attached to a representative of one body of health providers to report to another professional evidence of patient abuse of a course of treatment? I'll give you an example of what in fact can be done today. It is very simple for a laboratory to ascertain whether a diabetic is indeed following an appropriate course of treatment simply by whether the patient shows up for the next step in that course of treatment, for the next lab test. The lab is quite able to predict that the patient is not following the course of treatment that has been prescribed and could well ultimately become a candidate for dialysis as the disease progresses and other things occur.

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Right now there is no responsibility or obligation, and indeed there's a constraint, respecting the laboratory reporting to the physician that the patient is not indeed following and participating in the course of treatment that has been prescribed. There could be a benefit in doing that that could ultimately lead to greater health outcomes in the end. We should be talking about what obligations there are and what responsibilities are attached to that kind of information-sharing.

What part of a comprehensive system developed for Ontario should be available for purchase by interested parties within the province, the country or other jurisdictions?

Finally, what right does a patient have to his or her full medical record, and who should have the responsibility of making that record available or parts of it available?

I believe that those questions merely scratch the surface of those which should be addressed by the public generally, by health care professionals, practitioners and providers and by legislators in a carefully thought-out process of dialogue. They are ethical and legal questions that should not be given short shrift through hastily crafted legislation which provides all-encompassing powers to the minister to enter into agreements, to collect, use and disclose personal information concerning insured services provided by physicians, practitioners and health facilities, whether that information is collected directly or indirectly. The privacy commissioner has, I know, made a compelling argument about the issues which I am addressing today.

My recommendation to you, and I hope you will take it back to the minister and he will take it to cabinet, is that the government should withdraw all amendments respecting health information which are included in Bill 26 and engage in a proper consultation, which in this, as in many parts of the legislation, I believe it has not done.

I am certain that the opposition parties will support this recommendation, and I urge members of the government party to exercise their common sense and demand of the minister that a full discussion of these ethical and legal questions occur in advance of legislation and not subsequent to it, if at all.

In media reports the minister has justified the extensive amendments which he has put forward regarding health information on the basis of controlling fraud, but the scope of these amendments is much broader, including those which have themselves been amended.

The amendments to the Public Hospitals Act, the Independent Health Facilities Act, the Health Insurance Act and the ODBA which are included in Bill 26 provide the minister with unique and broad powers to collect and disseminate personal medical and health records or to enter into agreements to do so. Only the amendments in the original proposals which were put forward included any reference to confidentiality requirements binding the party with whom the minister makes an agreement.

I want to refer you to the news release which the minister provided today, in which the minister indicates that he will ensure that patient information is made anonymous when disclosed or released under agreement for the purposes of managing or evaluating health care services. There is no change, however, to the section of the bill which allows individual records, including those of the Ontario Drug Benefit Act, which may be collected "for any purpose," and those records which are collected "for any purpose" appear under the new amendments which the minister has put forward to be excluded from the confidentiality provisions which the minister insists he has added.

So I ask, what are those other purposes? If they are to open the way to a broader health information system that will provide us with the data that are useful for care management, for administration, for planning and research, those goals are valuable. But as legislators you have an obligation to ensure that they are implemented in an accountable way.

Let's be very sure that no one's rights are trampled and that there is open and valuable discussion that leads to a precise and thorough health information policy, and I urge that there is separate legislation dealing with health information that is transparent and into which accountability mechanisms are built. The health information sections of Bill 26 are too much, too soon, and I urge the government to withdraw them. Thank you very much.

Mrs Caplan: Thanks, Barbara. What an excellent presentation and thoughtful analysis of the bill. I know you're not here as a partisan and I also know your background and history in fighting for the development of medicare.

One of the things that upset me today was that the minister released his amendments, stating that the bill had always protected confidentiality, even in light of the fact that the commissioner had come before us.

I know that information technology has advanced very rapidly and that there is a real need for significant changes when it comes to how that's done. I've also called for a new piece of legislation and a halt on everything until it comes, but frankly, I don't think they're going to do it. You've put it in such a very good way, and all those questions that have to be answered should be dealt with in a forum.

Is there any one particular concern that you have? Is there anything you can see in this bill that couldn't wait when it comes to confidential information? Is there anything that is so urgent that you think it has to be done immediately and couldn't wait for that legislative package? Because we have made the offer that says, "If there is something that's urgent, identify it and we'll deal with that and then move to a comprehensive package." I haven't been able to find anything in here that is so urgent that it couldn't wait for a spring session debate on health confidentiality and health protection privacy legislation.

Mrs Sullivan: That was one of the questions I asked myself when I considered even making a presentation to the committee. Certainly, from the early 1980s, the entire question of how one moves into a broader information system in health care has moved along haltingly, and in some cases with advancements in the industry itself. There are bodies which have given considerable thought to these issues, not the least of which were professional bodies themselves, but also medical and legal-ethical bodies and institutes such as the institute for health informatics.

My sense is that until the public heard about some of the provisions of this bill, there was very little public discussion of the meaning and nature of having personal health and medical records available to other people for whatever purposes, whether they be legitimate or not, and it seems to me that not only does the expertise, which has already been put into place among health care providers and those people involved in the ethical issues, but the public ought to be brought together so that there is a policy from which the technology flows.

Mrs Caplan: Exactly.

Mrs Sullivan: That's where we should start.

Ms Lankin: Barbara, it's really great to see you, and just for the government members' benefit, in the days

when the current Health minister was Health critic and used to rail about \$700 million, Mrs Caplan was the official opposition's Health critic and didn't indulge in such excesses at all with respect to her criticism, as I recall as minister at the time.

Mrs Caplan: No. It was actually Mrs Sullivan.

Ms Lankin: Mrs Sullivan. Sorry.

Mrs Ecker: You're doing it now.

Mrs Caplan: It's all right. It's late in the day.

Ms Lankin: I'd like to take this moment actually to share some stuff in a rare moment of non-partisanship. Many governments have had an opportunity to introduce health information privacy legislation. The privacy commissioner has been urging that for a long time, and in the way in which governments set their priority legislative agendas, these considerations go on in cabinet, and as time goes on, you narrow it down and you start to focus more.

I can tell you through the course of time in our government the commissioner urged me a lot, and while it was on the list of maybes, it never made it in terms of priority because it was too late by that point in time. It never made it under the Liberal government and, quite frankly, although Jim has now committed to it, unless you come away from this process—and I think there's a compelling reason now—and go back and place it on your agenda, the Common Sense Revolution agenda will take over and you won't get to it either.

1740

The other thing I want to say is that the current government has committed itself to smart card technology and has stopped the other health card. We did a pilot project on smart card technology, and we know, I think all of us, the value of the health information base and from health care, both epidemiological and individual patient care.

The questions that Barbara spells out here are absolutely what we ran into, square into the face. The working group that's been put together is trying to work through some of these questions, and you heard from the health information management folks who were here. They're trying to deal with some of this, and electronic transmission of data.

The new health card that was being implemented was being done on a phased basis to allow, at a certain point in time, those that were being issued to people to become smart cards or on the five-year renewal so that could happen. You can't hold up the card waiting for smart card technology, because you won't be able to do smart card technology until you deal with the health information stuff.

The suggestion that's being made here, and I know it's the last presentation of the very end of the processes before we go into clause-by-clause, but given that there are still a couple of problems in terms of the Ontario Drug Benefit Act and the disclosure there and whatever, while it would be very hard to do, it would be a very wise thing to do, to try and pull those sections out, put them under the umbrella of health information privacy legislation, with the goal to implement your smart card, which gives you the political capital to go back to cabinet and get it.

I urge you really genuinely, in a non-partisan way, to consider it, because I think the issues that Barbara has identified are ones that are really important for the system that we all have to grapple with irrespective of—they're not partisan. Let me just put it that way. They're just real issues that have to be dealt with before you can move with the new technology.

Mrs Johns: I'd like to thank you for being here. I know that it's the end of a long day and we all look a little tired, but there were lots of interesting things that you had to say in your presentation. From my standpoint, I could tell that it brings back amounts of knowledge with the health care system and ties it into understanding about the needs analysis of an information system.

To me, that was a really good process, because as every one of us comes into politics we always say, "Why are they dealing with these antiquated cards? Why can't we get more information?" and as each of us has gone through the Ministry of Health, I think we all wonder about that and wonder how we could make that better.

I want to tell you that we had probably only one other presenter on the health information system, and it was a group that talked about verification. They were from Mytec, and they had some very interesting ideas about the starts of information systems, but you've given us some good questions to be asking.

My question was a lot like Frances's, and maybe she answered it for us. But I want to know if you could tell me—this is obviously an important issue to everybody—what are the difficulties that every government seems to have had to be able to move towards this process of having a better information system?

Mrs Sullivan: That would require another 20-minute presentation, and I know it's the end of a long public hearings process for you. There are a number of issues.

To sum up, first is the question of money, which is a large question, and the shifting of resources, or the will to enter into public-private sector arrangements where some of the capital and introductory costs can be carried by other bodies. That itself raises other ethical questions, but money is certainly one of the issues.

Another very key issue over the recent past is that Ontario has only very recently become an international centre of technology and has only recently developed the expertise that is now being sold to other jurisdictions in other fields. Now we have it all right at our doorstep, and frankly, in my view, the introduction of this kind of technology can also be an export opportunity for the province and for those who participate with the province in developing the system.

Frances has talked about the will and other priorities. That is very clearly one of the reasons that it hasn't moved forward. But we're at a time, I believe, when our systems now are costing us money and costing us a health benefit, and we bloody well better have a look at it pretty quick.

The Chair: Thank you very much. We appreciate your presentation today and your interest in our process.

Mrs Caplan: A question for the record? And also, if you'd like, I'd be happy very briefly to answer some of those questions.

The Chair: Let's just put your question, Elinor. It's been a long day.

Mrs Caplan: Okay. I'll tell her privately.

There are two questions that I want to put. The first: I want to clarify the earlier question that I asked, is it the policy of the ministry to provide audiology services in IHFs, independent health facilities, as an insured service? Clear and simple.

Mr Clement: That's a lot better.

Mrs Caplan: The second: I would ask the ministry to answer—obviously they have to have thought about—the 20 questions in Barbara's brief. Hopefully through—

Mr Agostino: For Monday.

Mrs Caplan: Let me put it this way. Before this bill has completed clause-by-clause. Let's have some of the ministry's thinking on this, because these are the issues that have to be addressed, and we've got the privacy commissioner coming on Monday. I don't think it would hurt if we could have them by then, but I won't hold you to that time line. I would appreciate it before the end of clause-by-clause debate.

Ms Lankin: This is with respect to an answer that was tabled to an earlier question that I asked. I'd like to thank Mr Clement for tabling an answer to my question of Friday, December 22, one month later, about subsection 18(1) of the Health Insurance Act, to which you tabled amendments today making my question and the answer totally redundant. Thank you.

The Chair: Just a couple of housekeeping things: Copies of all the submissions that have been sent directly to the clerk's office, some have been distributed to your offices back i

n Toronto today and the balance will be there first thing Monday morning.

Our meeting with the privacy commissioner is set for 9 o'clock Monday morning in committee room 1.

We stand adjourned until 10 o'clock in Toronto on Monday in the Amethyst Room.

Ms Lankin: Thank you, Mr Chairman, for a great job. *The committee adjourned at 1748.*

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président: Carroll, Jack (Chatham-Kent PC)

*Carroll, Jack (Chatham-Kent PC)

Danford, Harry (Hastings-Peterborough PC)

Kells, Morley (Etobicoke-Lakeshore PC)

Marchese, Rosario (Fort York ND)

Sergio, Mario (Yorkview L)

Stewart, R. Gary (Peterborough PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Caplan, Elinor (Oriole L) for Mr Sergio

Clement, Tony (Brampton South / -Sud PC) for Mr Kells

Ecker, Janet (Durham West / -Ouest PC) for Mr Stewart

Johns, Helen (Huron PC) for Mr Danford

Lankin, Frances (Beaches-Woodbine ND) for Mr Marchese

Also taking part / Autre participants et participantes:

Agostino, Dominic (Hamilton East / -Est L)

Christopherson, David (Hamilton Centre / -Centre ND)

Curling, Alvin (Scarborough North / -Nord L)

Doyle, Ed (Wentworth East / -Est PC)

McLeod, Lyn (Fort William L)

Pupatello, Sandra (Windsor-Sandwich L)

Skarica, Toni (Wentworth North / -Nord PC)

Clerk / Greffière: Grannum, Tonia

Staff / Personnel: Drummond, Alison, research officer, Legislative Research Service

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First Session, 36th Parliament

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Première session, 36^e législature

Official Report of Debates (Hansard)

Monday 22 January 1996

Journal des débats (Hansard)

Lundi 22 janvier 1996

**Standing committee on
general government**

**Comité permanent des
affaires gouvernementales**

Savings and Restructuring Act, 1995

**Loi de 1995 sur les économies
et la restructuration**



Chair: Jack Carroll
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENT

Monday 22 January 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Lundi 22 janvier 1996

*The committee met at 1002 in room 151.*SAVINGS AND RESTRUCTURING ACT, 1995
LOI DE 1995 SUR LES ÉCONOMIES
ET LA RESTRUCTURATION

Consideration of Bill 26, An Act to achieve Fiscal Savings and to promote Economic Prosperity through Public Sector Restructuring, Streamlining and Efficiency and to implement other aspects of the Government's Economic Agenda / Projet de loi 26, Loi visant à réaliser des économies budgétaires et à favoriser la prospérité économique par la restructuration, la rationalisation et l'efficacité du secteur public et visant à mettre en oeuvre d'autres aspects du programme économique du gouvernement.

The Chair (Mr Jack Carroll): Good morning, everyone. Welcome to the Amethyst Room. Just a couple of housekeeping things before I ask the clerk to explain some of the documentation that you will be presented with this morning.

First of all, I just want to refresh everybody's memory about how the process will work this week. According to the motion passed in the House, and I'll read from it:

"From Monday to Friday during the weeks of December 18, 1995, January 8 and January 15, 1996, from 9 am to 9 pm" the committee will meet "to receive public submissions on the bill," which we have done, "and from Monday to Friday during the week of January 22, 1996, from 10 am to 6 pm to complete clause-by-clause consideration of the bill. All proposed amendments shall be filed with the clerk of the committee by 4 pm on"—Thursday—"January 25, 1996. At 1 pm on January 26, 1996"—Friday—"those amendments which have not yet been moved shall be deemed to have been moved and the Chair of the committee shall interrupt the proceedings and shall, without further debate or amendment, put every question necessary to dispose of all remaining sections of the bill and any amendments thereto. Any divisions required shall be deferred until all remaining questions have been put and taken in succession with one 20-minute waiting period allowed pursuant to standing order 128(a); that the committee be authorized to meet beyond 6 pm on Friday, January 26, 1996, if necessary until consideration of clause-by-clause has been completed."

That's the process under which we are operating today. Room 228 has been set up as an overflow room with live television in there for anyone who cannot find a seat in the Amethyst Room.

I made an arbitrary decision with the Clerk's office that lunch would be from 1 to 2. Is everybody in agreement with that, to split the day up into a three-hour

period and a four-hour period rather than a two-hour and a five-hour period? Do all parties agree with that?

Mr Gerry Phillips (Scarborough-Agincourt): That may be the last unanimous approval.

Mr David S. Cooke (Windsor-Riverside): We're used to arbitrary decisions.

The Chair: Okay, thank you, Mr Cooke.

I think we should probably also allow for a 15-minute break in the morning and the afternoon. We'll have those in the middle somewhere. Having said that, I'd ask Mr Decker to explain the procedure and some of the paper that has been handed out and how it's to be used.

Clerk Pro Tem (Mr Todd Decker): I guess most importantly in what members have in front of them is the first package. It's got an elastic band around it. It consists of government and NDP amendments that we have received as of this morning. There are additional ones being copied. There are more than this. This is just the first 100 pages. They're numbered 1 through 100, and the others will be numbered, also consecutively, from 101 on as we receive additional ones.

As amendments are tabled that makes it into a part of this package or subsequent packages, we will number them A, B etc so that when you are integrating your packages, you can easily determine at which point in the packages subsequent amendments should be put.

You've also been provided with a quick reference which indicates all of the schedules in the bill, the acts that are amended by those schedules and the specific sections of those acts in those schedules, just to provide quick and easy reference.

The Chair: Any questions for Mr Decker?

Mr John Gerretsen (Kingston and The Islands): Does that include all the amendments that were filed at the two subsections of the committee last week?

Clerk Pro Tem: We're currently copying the remainder that we already have. This is just the first 100 pages. By the end of the morning we should have the remainder of everything else that's been tabled through the end of the bill. As I said, any additional amendments that are tabled today and in subsequent days will be numbered accordingly to fit where they should fit chronologically in the overall package and be copied as quickly as we can copy them.

Mr Phillips: They should be two-sided. I just want to be clear. I understand the government has now tabled 140 amendments. Have I got that number right?

Clerk Pro Tem: I haven't counted them. I'm not sure of the number, but they have tabled amendments that go right through to the end of the bill. We're copying them now and we'll have them in the committee room as quickly as we can.

Mr Phillips: It's very difficult. Just as an example, they tabled an amendment last Thursday, which we assumed had been well thought out, and then in an amazing turn of events, they tabled an amendment to the amendment on Friday. I don't know whether you're dealing with the amendment or the amendment to the amendment, but it is very difficult, I think, for us to be dealing with this bill when, as we start the bill, we don't even have the amendments that the government has already tabled, which I gather are 140, if one can believe that.

The second thing I'd say is that it was my expectation that the ministers were going to be here to explain the substantive amendments, because many of them fundamentally change things. I assume the ministers will be in shortly to explain the significant changes.

The third thing I'd say is, if we're going to try and make sense out of this extraordinary process where the government originally simply wanted us to pass the bill with no debate and now we've got 140 amendments, I wonder if the government can indicate to us, at least, are we finished with the amendments?

I know you must have them all done because originally you weren't going to have any debate. Can we now assume that the book is closed, we've got all the government amendments and we know what we're dealing with from the government side now on amendments? Is that a fair question to you, Mr Chair?

The Chair: Mr Sampson, can you comment on that?

Mr Rob Sampson (Mississauga West): With respect to the amendments, Mr Phillips, you have I believe in your possession the amendments that we are currently hoping to officially table. We know they are not officially tabled until they're read into the record and moved by somebody, but you have what we have so far, as far as our indication of what the potential amendments might be.

With respect to the ministers attending at this committee, my understanding was and in fact I believe the clerk did send off a request to the ministers to attend. At this point in time I'm not aware of any who have indicated an indication to attend, but it's a request that was expressed by the committee through the clerk to the ministers.

1010

Mr Phillips: May I just say, Mr Chair, I find it frankly insulting to the public that we are seeing the government proposing some very fundamental changes—and that's their own definition. The bill, as presented, was very much flawed. We now have, I gather, substantive amendments, and the ministers don't have the courage to come here and explain them. I don't mean to be difficult, but I think the public would expect that much from the ministers.

The Minister of Municipal Affairs has frankly messed this whole process up. At one time no taxes were in there; now he acknowledges it was possible to have taxes. The restructuring proposals have changed, arbitration with our firefighters and our police has changed. We have a bill that was flawed. The government's trying now to do some significant surgery on it to see if they can't save it, and the minister doesn't have the courage to come in here and explain what is intended by the amendments.

This should not be a surprise to the ministers. We specifically, I know, raised that at least three weeks ago, saying it would be our expectation, and I thought we had an undertaking from the government that that would happen. I find it just part of this sorry process we're going through, where you first tried to ram the bill through with no debate, you then were forced to have some debate, and now, when you're forced to acknowledge that the bill was a—I believe when you look in the dictionary in the future under "incompetent," they'll have a picture of Bill 26. This is an incompetent bill, and the ministers refuse to come and explain the changes.

I find that insulting and I would hope that the government members would use whatever authority they have and whatever influence they have to perhaps place a phone call to wherever they're hived out and suggest that they come out of their offices and get over here and explain what they're doing to the bill. I really think we're owed that.

Mr Cooke: Mr Chair, we have tabled some procedural motions with you this morning that I expect and hope we will get to this morning. One of them deals with the attendance of ministers before the committee. Mr Phillips is correct that, I think on the first day on our side of the committee, after a couple of the ministers made some very brief comments and answered a few questions, we indicated we would certainly want the ministers to be here on the first day of clause-by-clause, because we've got dozens, hundreds of amendments that have been tabled.

We've got a Minister of Municipal Affairs who on the first day that this committee started hearings said: "There will be no need to amend the bill to deal with the tax issue. I'm confident of it." We all knew of his public statements that if in fact he was wrong, he fully intended to resign, if there was a need to bring in an amendment to stop sales tax, income tax and gas tax at the municipal level. His credibility has been destroyed during the public hearings, absolutely destroyed.

We've got among the most respected municipal lawyers in the province who have totally destroyed Mr Leach's credibility. I think the public and the members of the Legislature are owed an explanation by that minister as we go into the amendments, why is he now agreed that this bill, as unamended, would allow for gas tax, sales tax and income tax at the local level? They scrambled in the last week to make sure that this didn't happen, as Tory mayor after mayor came before the committee and said, "When this bill is passed, we're going to put in a gas tax at the local level." That was the norm.

I think it's absolutely essential, normal, a definition of respect for this place and the process, that the ministers should be appearing before the committee today explaining their amendments not only to us but to all these folks and people who are going to be watching this on the TV who have in fact made presentations. They want to know what those amendments are and what the rationale for the government amendments is and, quite frankly, what the rationale for the government rejecting certain amendments is. That's a basic respect that most governments show for the democratic process.

I'm sure there will be no one in the province particularly shocked at the lack of respect of this government for the democratic process on this particular bill, since it has been the norm on how this bill has proceeded. But I don't know how we can proceed fairly and how we can proceed with any appropriateness without having cabinet ministers appear before us. I find it mind-boggling that the one minister whose name is on this bill, the Deputy Premier, the Treasurer, hasn't had the guts to appear before this committee once. He, of all people, understands the process and I thought had some respect for the democratic and parliamentary process in this place. He didn't even come before the committee, and the bill's in his name. That is mind-boggling.

I'd like to know, for all of the people who want to follow these proceedings, who have gone to great difficulty over the Christmas holidays, and at times very difficult, to put together their presentations, to make recommendations to all of us—they'd like to know the outcome. I'd like to know about cabinet ministers and what we're going to do about that. I'd like to know about copies of the government amendments for all of the people who want to follow this procedure over the next few days, whether the government has had the courtesy and respect for those who made presentations to the committee to prepare enough copies of the government amendments to distribute free of charge. Hopefully there's not going to be a \$600 or \$800 charge, as there was for the original bill, to distribute copies of those government amendments for the public that is viewing here in this room.

Mrs Elinor Caplan (Oriole): I guess at this point nothing surprises me any more, but from my own experience here in the Legislature, I have never seen a substantive piece of legislation that did not have someone carrying the bill through committee, someone there to answer questions on behalf of the government at all times. I've never seen a substantial piece of legislation—I'm not talking about purely housekeeping; I'm talking substantial legislation—that has not had the minister responsible for that legislation not only make a statement about its policy intent but also be available at some point to defend the changes that the legislation was enacting. For the people who are here, I think that not only is it important but it is respect for the democratic process, respect for the House and respect for good lawmaking that the ministers who are proposing these changes be here to defend them and that we have someone here to answer the policy questions that follow from and are a very significant part of this huge and complex bill.

I've said a few times throughout the public hearings that I felt Bill 26 was about power and not about policy. I believe that unless we have the ministers here during the discussion of clause-by-clause, the understanding of what this bill can do—even if the ministers say, as they have said before, "We have no intention of doing that" or "We're not going to do that," the reality is that people have a right to know from the ministers that they understand the potential of Bill 26.

As I understand it, it was not an invitation from this committee; it was a request based on the importance of having the ministers here to defend their legislation and

answer those questions. My worry is that they can't answer the questions. It's not that they don't want to answer the questions; I don't believe the ministers are able to answer those questions, because I don't think this bill was thoughtfully considered before. Certainly, and I don't blame any of the members of the government caucus, many of them could not answer the questions. We got to the point where all questions had to be tabled and we had to have written answers, and that does not make for good lawmaking.

1020

So Bill 26 is a bad bill. We've seen a huge number of amendments. We've had no one here from the government giving us the answers, and unless they do, it will remain a bad bill and bad law. I would ask the ministers to reconsider and to come to this committee and defend the policy implications of this legislation.

The Chair: Ms Lankin, do you want Mr Sampson to address those issues or did you want to comment first?

Ms Frances Lankin (Beaches-Woodbine): I'd better make comments on that first because there's one point in particular that Mr Sampson might be able to respond to.

Let me say first of all that I agree with the comments that have been made and I'd like to be a little more specific in terms of my own desire to see the Minister of Health come before this committee and to present the amendments that have been tabled, 80-some-odd, to the health sections of this bill, to explain the intent of them and to defend the areas that he has chosen not to amend, with amendments that have been recommended by virtually every presenter who came before the committee.

But let me give you three examples of why I feel it is important both for the public and for myself as a committee member to have the minister here and to be able to ask him direct questions.

Group after group came forward and suggested that it was very important that the ability for the minister to delegate powers to the Health Services Restructuring Commission be limited, and in fact eliminated from the bill. Instead, the amendment we see having been tabled last week gives that health restructuring commission more powers. Instead of just "duties as assigned," the language that's been amended and added in is "powers as assigned." That runs absolutely contrary to all of the presentations from the hospital sector and community health sector that we heard. I'd like to know why not only did the minister not listen to the presenters in terms of what they wanted to see in an amendment, but why he's gone in the absolute opposite direction.

Secondly, an amendment with respect to concerns that have been raised about the general manager of OHIP making decisions on medical necessity and therapeutic necessity is a problem that was clearly articulated by presenters. The ministry puts forward an amendment which I think was drafted in extreme haste, which has the general manager consulting with a physician with respect to both medical necessity and therapeutic necessity. While that might sound okay on the surface, what it means in practice—and anyone who knows the Ministry of Health and knows OHIP and the insurance system and what services are covered knows that that means the ministry has now put a physician's opinion as an overrid-

ing opinion over the delivery and the appropriateness of therapeutic services such as chiropractic and chiropody, not to mention the problems that raises under the scopes of practice of the individual professions under the Regulated Health Professions Act, but simply within the whole health care reform move to a multidisciplinary team.

For the ministry at this point in time to codify a superior position for one health care practitioner to be reviewing the practice, professional scope and duty of other health care practitioners is beyond mind-boggling. In fact, it's incorrect under legislation, it is contrary to the directions of health care reform and it is an affront to those other professions who are very angry about this and were not told that this was an intent.

I think it was a mistake. I suspect that needs to be amended, and I noticed, Mr Sampson, that you didn't really respond to Mr Phillips's question about whether there would be further amendments coming from the government. Specifically on that issue, I would like to know if that's going to get fixed. Are we going to see an amendment to the amendment to fix the mistake that you made while you were trying to fix another mistake that was in the bill, all of this speaking to how quickly this has been done and how necessary it is to have the minister here? I'd like to ask him why he approved that amendment, why he, sitting in his office reviewing all of the amendments that would be tabled, would not have recognized, given his experience as a minister and his knowledge of the departments that he oversees, the very significant problems he was creating between different classes of health care practitioners.

Thirdly, in the regulations tabled on Friday, in the Health Care Accessibility Act under section 9, which is a general regulation-making section, there is a new regulation-making power put in that says, "We can make a regulation prescribing anything that we can make a regulation under." It doesn't even narrow the power that you're trying to give yourself. All the way through the criticisms that we have been hearing from the public is that too much has been left to regulation, that too much will be done behind closed doors, that we don't know how these regulations will be used, that the government is asking us for a blank cheque and they're refusing to tell us what number they're going to write in before they cash it. That has been a repetitive theme of the presentations before the health section committee dealing with this bill.

Instead of seeing more of the things that would have been done in regulation written into the legislation, we see the exact opposite; we see a regulation come forward that doesn't even centre on any particular power, just saying you can make regulations under which you'll make regulations. I'd like to ask the minister what he intends to use that for. There's no purpose set out in the Health Care Accessibility Act; we can't even tie it to the intent of that piece of legislation. It's a small, grab-all piece of legislation. What does he intend to do with it?

Those are our legitimate questions, and those are only three examples out of many more that I could go on with that we, I think, need to have the minister appear to answer and to be able to present his views of the amendments he's putting forward and how they respond to the public's concerns.

So, Mr Chair, I would urge Mr Sampson to address the committee members' concerns in his response and I would indicate, if you haven't been informed by the clerks, that there are motions that have been tabled in this respect that the committee will have to deal with.

The Chair: Mr Curling, you're next. Did you want Mr Sampson to address those issues first or are yours—

Mr Alvin Curling (Scarborough North): I'd like to comment and make some appeals to Mr Sampson too that in the meantime, when he's addressing those, maybe he can address mine too. My appeal goes beyond Mr Sampson; my appeal goes also to you, Mr Chair, and I seek your support in this.

We are going to pursue one of the most important pieces of legislation ever to have been presented here in a most unprecedented manner. In order for us to be effective, yes, I would hope that the ministers, whichever ones of them, appear so we could get some sort of explanation on some of the bills.

As you know, Mr Chair, the government was all ready to have this legislation, this law, in place by December 14, so I would assume that they're ready. As a matter of fact, they were trying to get the opposition off guard in order that they could ram this thing through. This did not happen, and I presume they themselves maybe appreciate the fact that they were given the opportunity to put in this amount of amendments that they are putting in today. The clerk hasn't told us yet if this is all. I don't think he can guarantee us that these are all the amendments that the government will put in. We have amendments, the Liberal Party; the NDP have their own amendments. I would like to know, to you Mr Chair, because we need to do this legislation the best, this very complex piece of work which a lawyer said he had to spread out about two dining tables, to spread the laws out to get some coordination to understand this.

Therefore, with the help of the experts, those ministers who seemed to have a hand in this—and the government members seemed to be shut out too, because they could not explain some of the questions that we asked and some of them refused, because as soon as they explained something, the minister contradicted, and as soon as the minister stated something, he also contradicted himself through that process.

I'm going to ask you to appeal to the ministers on your part as the Chair so that we can have a very effective piece of legislation put through. I don't see how effective it can be, because it is so wrong from the start.

I'm going to appeal to Mr Sampson, because of his colleague in caucus, that since I'm sure you meet your minister once a week or I'm sure you speak to him somehow—you are his parliamentary assistant. He must speak to you, even somehow to ask you what's going on down here. If he's not, he tells me he has no interest in—

Mr Cooke: He must have e-mail.

1030

Mr Curling: He must have e-mail, all those laptops you get. You could ask your secretary or the many, many policy people you have there, "Did anything come on the e-mail that the minister wants me to do?" You can e-mail him, if you don't even see him, and request him to come forward.

We are tired of bailing out the government on this part of it. There are over three weeks of hearings by the government, by this committee. The opposition in some respects have tried to have shadow and parallel hearings for those who were shut out or refused.

I'll tell you an instance. I'm from Scarborough North, Mr Chair, and you must have been to that wonderful part of the country. We are maybe the fifth-largest municipality, and that mayor was refused to appear because there was no time. Now you're going to give them enormous powers to carry out some of the work in your restructuring—Mr Sampson, you can tell your minister—in this restructuring process, and he did not get an opportunity, and neither did Scarborough get an opportunity to have a hearing. I had to have a town hall meeting. Over 200 people attended, and professional people, who wanted to present. I went to St Thomas, where there are people there, the mayor there did not get an opportunity either to present.

So we're tired of bailing out the government in having hearings so people can speak. I went to the Premier's riding in North Bay. Over 150 people turned out there, with not enough idea of what's going on down in Queen's Park, thinking Queen's Park will dictate to him.

My appeal to you, Mr Sampson, is to tell the Premier himself to send Mr Eves and all the other ministers who are impacted on this, because the fact is that we cannot proceed in a very intelligent way. These are laws that will affect people's lives. These are laws—well, I wouldn't call it laws, regulations—which we don't even know how they're going to be impacted. If they were legislation, I would say it's quite possible we could read them and say, "Well, we see where the government is going." But you intend, in the kind of bullish way the government is doing, not to have legislation but to have regulation, hopeful that one night they get up and they change their mind, and all in the name of restructuring and all in the name of fiscal responsibility, while they are encroaching on people's lives. It is sickening, and I hope I can appeal to you from that basis, that you can say to the ministers to be here so questions can be asked.

I would like to know too, and Mr Sampson may be able to tell me, is this half of the amendments? I would refresh your mind on what Mr Phillips has said. Are these amendments to the amendments or are we going to get another amendment to the amendment to amend those amendments? Because we haven't started yet and you start amending.

You know that this would've been law December 14, and your ministers and your Premier would have said to all the people of Ontario, Merry Christmas, and sock it to them without knowing what's going on.

So my appeal to you, sir, is that as the first day that we meet, you could report back by this afternoon, even by e-mail. I'll even go personally if you want me as a messenger. I'll go personally to the minister for you if you're scared to talk to him, since they have not shared many things with you, to bring the minister here. Maybe we could get the Sergeant at Arms, in the same way they would've ejected me just trying to get this thing going, to bring him here if you want that. We'll do anything to get them to do that.

The Chair: Mr Silipo, Mr Sampson and Mr Gerretsen: That's the order.

Mr Tony Silipo (Dovercourt): I just want to add a couple of comments to what my colleagues have said on this point. I have to say that we've heard a lot during these hearings about whether the government is just simply being incompetent, and I think quite frankly that's the best that can be said of the way in which the government has been handling this bill and the way in which this government continues to deal with this issue and this bill today.

I think it's far more than that. I think it shows complete arrogance and complete disdain for the democratic process. We have been asking for ministers to be present for the better part of last week, indeed from the beginning, but Mr Sampson, who was with our half of the committee, will recall, as will other members of the government, my request and those of Mr Phillips and others to have the ministers present, today or throughout the week, when they saw appropriate, as we were dealing with the various schedules.

I just find it completely incomprehensible. Although nothing surprises me any more from this government, I still have to say I find it incomprehensible that this government would continue to show the kind of disdain for the democratic process by not having the decency to indicate that ministers would be present at whatever points in the week it makes sense in terms of the schedules that we are dealing with.

Let me just point out, Mr Chair, a couple of other areas that are clearly affected by this bill about which we've heard very little.

Pay equity: There are changes to this bill that remove the rights of pay equity for 100,000 of the lowest-paid women in this province. The Minister of Labour, who is responsible for that legislation, did not ever appear before the committee, and the only reference we had to that major change for 100,000 women in this province was two lines in a statement from the Chair of Management Board.

We heard last week from Mr Sampson that the government had "other ideas about how to deal with this," I think were his words. Well, the only thing that I've seen is a slight amendment to that section, but it does not change fundamentally the taking away of the rights to pay equity for 100,000 women, and I think it's incumbent upon the Minister of Labour to have the courage to come before us and explain why the government is taking those actions, because I haven't heard a word of explanation yet from anyone on the government side.

This bill changes significantly the arbitration rules, and yet we've heard very little in the way of either, again, the Minister of Labour or the Solicitor General, who's responsible for the way in which that new change will apply to two major groups, the firefighters and the police. Again, there have been some amendments tabled on that point, but I'd be quite interested to know how the government intends to explain those amendments, because what they seem to be doing, as I've read them, is they seem to be on the one hand toughening up the criteria and the directions to the arbitrators and the restrictions on the arbitrators, and then they also seem to

be saying, on the other hand, arbitrators can disregard those directions. I don't know how the government is going to try to explain that one, but again it would be useful to have a minister responsible here so that at least we can understand their version of how this particular part is going to be effected and interpreted.

Thirdly, we know that this bill takes away the pension rights of thousands of people who work for the government. Again, that's been one of the concerns, together with the others, that we heard throughout the hearings, and again we see no explanation from the government side and from the ministers responsible as to why those actions are being taken.

For those reasons and more, and certainly those that my colleagues have raised, it just seems to me to be ludicrous that the government would want to proceed on a bill of this nature without having the courage and the decency to have the relevant ministers in front of us throughout the week. I just can't believe that the government would actually intend to go through the clause-by-clause process of debate on this bill without having the relevant ministers here.

The Chair: In view of the fact that we have several motions relative to this whole area we're discussing, can we agree that Mr Gerretsen would have a chance to talk, Mr Sampson to answer, and then we'll deal with the motions? Is that reasonable? Okay.

Mr Gerretsen: I would just like to add to the points that have already been made and deal specifically with the municipal affairs area. There are two major reasons why schedule M is there, and that deals with restructuring and the direct taxation questions on behalf of the municipalities. Just from the amendments that have been brought to our attention today and the ones that were moved on Thursday and Friday at our committee meetings, it appears to me that there has been some major rethinking by the ministry in both of these areas, and it seems to me it only makes sense that if the minister was there initially to give some presentation as to why he needed these two areas, why he needed these changes with respect to restructuring and direct taxation for municipalities, then he's got to give a reason now as to why he's making some major amendments in those areas.

I think it's interesting to note that in the section of the committee we were part of, right up until Thursday we were told on a daily basis that no amendments would be moved at all by the government until this morning, and the reason for that was that it would be totally unfair to those people who had already made presentations or were about to make presentations to the committee since they didn't know whether to respond to the amendments or to the original bill etc. Of course, all of a sudden that changed on Thursday, when I think there were initially six amendments moved and then another two, and I guess on Friday afternoon, at the very last hearing in Peterborough, another, what, 50 or 60, were put forward by the—

Mr Phillips: They amended the previous day's motions.

Mr Gerretsen: They amended the previous day's motions.

The sole point I'm trying to make is this, Mr Chairman, very clearly and concisely: If the minister felt that these sections are necessary in order for municipal government to function more properly—and I'm specifically talking about restructuring and giving the municipalities more power—and now he's making some major amendments in those areas, then I think that by the same token that he gave the original explanation, he should now come before the committee and explain to the committee why he feels there are major amendments necessary to the legislation.

He at one time stated that if there are any changes to be made, he was going to resign. So let him do the honourable thing. Let the parliamentary assistant take the word back to the minister and say: "Mr Minister, you were there on the very first day of the hearings. You indicated why it was necessary for these two major changes to take place in the Municipal Act. Now there are some amendments that make some major changes in that area to the way they were proposed." Let him come forward and explain it to the committee. Take the word back, and hopefully he'll do so.

1040

The Chair: Mr Sampson.

Mr Sampson: Thank you, Mr Chairman. By the way, if I slip and call you Mr Speaker, don't take that the wrong way. I had a tendency to do that on the road.

First of all, with respect to somebody carrying this particular piece of legislation, there will be three parliamentary assistants carrying this piece of legislation: myself, Mr Hardeman and Ms Johns. So there is a parliamentary assistant who will be carrying this particular piece of legislation through the committee work to the final end.

With respect to the ministers being here to defend the changes, again, we have the various parliamentary assistants responsible for the ministries here, who will speak to the items with respect to questions and concerns and the debate on the various sections to be discussed.

In addition—

Ms Lankin: On a point of order, Mr Chair: I'm sorry to interrupt you, Mr Sampson, and I apologize for that, but the information that you are giving is directly contrary to the information that was given to the health committee and directly contrary to a ruling of the Chair.

I specifically attempted to ask a question of Ms Johns, the parliamentary assistant to the Minister of Health. I was informed that there were no parliamentary assistants who were carrying this bill or had carriage of this bill. I objected to that; I asked for a ruling. I was told by the Chair, who recessed to seek a ruling and came back and informed us, that there was no rule which compelled a parliamentary assistant to carry it. We pointed out there was tradition and precedence. We were informed that that was not the way this bill would be proceeded with, that the parliamentary assistant did not have carriage, and I was refused the opportunity to place questions and to have questions answered by that parliamentary assistant. So I have a bit of a problem with what you're suggesting now, because that is not in fact what we have been informed and what the procedure was.

Mrs Caplan: On the point of order—

The Chair: To that same point of order, Ms Caplan?

Mrs Caplan: Yes. Ms Lankin's absolutely correct. We specifically requested either the parliamentary assistant or the minister to carry this bill at committee and we were told that there was no parliamentary assistant carrying the committee, all questions had to be tabled and would be answered only in writing. In case you weren't aware of that, that was what we were told, and that is a departure. I was very concerned about it at the time and I remain concerned that the ministers are not here to defend their bills.

Mr Tony Clement (Brampton South): Mr Chair, as someone who was party to that discussion, my interpretation of the context is somewhat different than my two friends across the way. That was a discussion in the context of the public hearings and hearing from deputants from across the province. I at no time suggested, nor did the government at any time suggest, that when it came to clause-by-clause, the technical, important work that this committee must do this week, there were going to be no parliamentary assistants who would have carriage over this legislation.

Interjections.

Mr Phillips: You split that hair real finely.

Mr Clement: So I think we were being utterly consistent—

Ms Lankin: It would have been interesting if you'd told us that at the time, Mr Clement.

Interjections.

Mr Clement: —and I would suggest that the opposition would welcome the fact that we now have parliamentary assistants who are part of the process and willing to speak to the particular amendments.

Mr Gerretsen: You mean they know something now that they didn't a few days ago?

Ms Lankin: They couldn't answer questions in the last two weeks. I don't expect to get any answers from them now.

The Chair: Thank you, Mr Clement. With all due respect, Ms Lankin, that's not a point of order. Mr Sampson.

Mr Sampson: Well. Where was I?

Mr Cooke: Go for option 3.

Mr Sampson: I'm just trying to catch up on my notes here. With respect to the amendments, I believe all the committee members have received a copy, in a binder—

Mr Gerretsen: Yes, we just got it.

Mr Sampson: —which is a consolidated version of the proposed amendments, both for the health and the non-health side.

Mr Cooke: So will you resign if there are any new ones?

Mr Sampson: Not unless you will, Mr Cooke.

Mr Cooke: If we bring any new ones in, I assure you that—

Interjection: We'll vote for that.

Mr Sampson: Obviously, the amendments are not the official government amendments until they're tabled and moved. There may or may not be subsequent amendments as we go through this process. We'll have to wait until the clause-by-clause review comes up. That's the purpose of the clause-by-clause review.

And as it relates to amendments, I should remind the committee that amendments, as legislation is reviewed, are not an unusual event. I would ask the members of the NDP to think back just a few years ago to the time in which they brought in Bill 74, which had 125 amendments, as I understand it; Bill 101, 124 amendments; Bill 121, the Rent Control Act—there's an act that involves almost every Ontarian—111 amendments; Bill 163, Planning and Municipal Statute Law Amendment Act, 99 amendments; Bill 109, Consent to Treatment, 94—

Mr Cooke: Right, and you called us incompetent.

Mr Sampson: Bill 40, there were 70 amendments.

Mr Sampson: Amendments are not an unusual part of the process. It reflects that through the committee process so far, when we've had deputations from concerned citizens, we have been listening and we're prepared to deal with those issues and concerns.

Mr Cooke: You should withdraw the bill and start all over.

Ms Sandra Pupatello (Windsor-Sandwich): So are the ministers coming, or what?

Mr Sampson: The parliamentary assistants will be here in the absence of the ministers when the ministers are not here, and that's how we will deal with this particular legislation.

I just want to close by saying we're being told it's incompetent to bring forward amendments. We don't think that's incompetent. We think it reflects the fact that we have listened to the issues and concerns of Ontarians in dealing with this particular bill, and we will continue to do so until the end of the time allowed to introduce amendments which, if recollection serves, is Thursday at 4 pm pursuant to the order from the House. Mr Chair, I'll pass the floor back.

The Chair: Thank you, Mr Sampson. I believe we agreed now to address these motions.

Interjections.

The Chair: I understand that, sir. I must remind you that the process today is between the members sitting at the table. At this particular stage of the game we've had our public consultation, and we're under the orders of the House to deal with this bill clause-by-clause. There is no precedent that I'm aware of that copies of amendments have been shared with the public, so that won't happen today.

Interruption.

The Chair: Thank you very much, sir.

Mr Cooke: Mr Chair, on a point of order: You may want to correct what you just said. There are many precedents. There was one process under one piece of legislation that I remember very clearly—Mr Curling's rent review legislation—where presenters actually sat at the table with members of the committee when they went through the bill clause-by-clause and were allowed to make comment on amendment after amendment.

The request has been made, and I think you need to address it and so does Mr Sampson. At the very least, we should be able to expect a package of government amendments that people out there can get a copy of and follow along and review the government amendments. This is not an in-house process. This is a public process, not just for the 130 members of the Legislature but for all 11 million people in the province who pay the bills.

The Chair: I stand corrected. The amendments are currently being copied and will be distributed as soon as they're ready.

Ms Lankin: Mr Chair, on a point of order: I'm hoping you will help me with this. You as Chair of the standing committee on general government made a ruling in response to my attempt to place a question to Ms Johns as parliamentary assistant to the Minister of Health. You ruled, as Chair of the committee—not in a subcommittee; as Chair of the committee—that there were no parliamentary assistants carrying this legislation and that I was not allowed to place questions to Ms Johns. If you check the Hansard—and I would ask you to do that—I believe you did not specify the period of public hearings versus clause-by-clause. You made a ruling, and I believe that ruling stands.

I would like you to check the Hansard—recess if you need to—because I believe you have prohibited us from placing questions to Ms Johns as a parliamentary assistant for Health. That would, I believe, apply as a general ruling to other parliamentary assistants and it would speak to the motions we are about to move and debate with respect to requesting ministers to appear.

The Chair: I agree that I made that ruling. Would you rather that ruling stand? Are you asking that ruling to stand or are you asking me to change that?

Ms Lankin: I'm asking you for a ruling. At the time, I objected very much. You made a ruling that I thought was out of order then. You made it. Now I want to know what the rules are. What I want, bottom line, is the ministers here to answer for their legislation and for the amendments and to explain it to us.

The Chair: Can we recess for five minutes, please? Thank you.

The committee recessed from 1051 to 1107.

The Chair: Sorry for the delay. Basically, Ms Lankin, what I said when you asked the question before was that there is no requirement in the standing orders for anyone to be present to carry the bill, and that in fact is true.

Today, during clause-by-clause, there are three parliamentary assistants here who have said they are prepared to be the focus of questions, and it is their choice to do that. So I have not changed the ruling.

If there is a section that requires the expenditure of money or the imposition of a new tax, the minister has to be present, and there may be some situations where that arises.

Ms Lankin: Could I ask for a clarification? If I ask a question of Ms Johns today and she decides she doesn't want to answer it, your ruling is that she doesn't have to answer it? Or now that she has put herself forward as parliamentary assistant—she sat for there weeks with me on the committee and refused to acknowledge that was her role, but now that she's put herself forward in that role, is she compelled to answer my questions?

The Chair: As I understand, Mr Sampson has indicated that he, Mr Hardeman and Mrs Johns are here today to deal with your questions.

Ms Lankin: Do we have to get a verification or a clarification of this every day? If for some reason the government doesn't like the way it's going, will there be a substitute for Mr Sampson or Ms Johns tomorrow? Would that be, in your ruling, appropriate as well?

The Chair: Maybe Mr Sampson could answer that better.

Mr Sampson: All I can tell you is that at this point in time, the three PAs carrying this bill are the ones that I have noted on the record.

Ms Lankin: So at this point in time, there are three PAs. Tomorrow, it could be different, because last week it was different; there was none. At this point in time, all the amendments have been tabled but there could be more. Could we get some order to how we are proceeding with this? I don't know how you expect good legislation to come out at the end of such a fatally flawed process.

Mr Chair, I think you have a responsibility also in these proceedings to ensure that work of legislators can be carried out in a way that is informed and in a way that will actually produce a product at the end which is governable in Ontario. I have no confidence in the way we've proceeded thus far and the way it's being set out that we will proceed. I will also ask that you move to the motions, because I believe this committee should now formally request the ministers to appear.

The Chair: Carry on with your motions, Ms Lankin.

Ms Lankin: The motions will be moved by my colleague Mr Silipo and I. I will move the first motion, which is:

I move that the Minister of Health, the Honourable Jim Wilson, be requested to appear before the standing committee on general government for clause-by-clause consideration of Bill 26.

The Chair: Ms Lankin, did you want to have an opening statement?

Ms Lankin: Yes. I'll actually keep my opening statement fairly brief. I think I have made the majority of the points. Let me say that through the course of the public hearings, it was very clear to me that the parliamentary assistant was not in a position to answer questions with respect to the details of this legislation. The answers that came from the ministry by and large were not satisfactory and did not answer the points that had been raised in questions.

Now we have a series of amendments which, as I pointed out to you earlier, either run directly in the face of recommendations that were made by many of the presenters who came forward or that further complicate errors that were in the original bill by trying to fix them and making mistakes while they're fixing them—and I suspect we'll have to see amendments to the amendments with respect to that—or in fact give broader powers than we had seen before without any narrowing of the scope or any definition of what powers regulations will be made under.

I believe that it should be the committee members' right to know why the Minister of Health, for example, believes that a physician should be consulted by the general manager of OHIP with respect to the therapeutic necessity of a chiropractor's treatment. I would like to know the answer to that question from the minister. I would like to know, when he reviewed all of the amendments that are being tabled and went through that, why he believed that was an appropriate amendment and why he would defend that amendment, or, if I am right that there

is a fundamental problem with that amendment as it as been brought forward, why he allowed it to be tabled.

The minister is the person who is ultimately responsible, and I remember going through this process of having counsel from the ministry come and present potential amendments to legislation to me when I was Minister of Health, I remember reviewing them with ministry staff and political staff, with members of our committee, I remember making decisions, and ultimately I was responsible for that decision, for that to be tabled. I want the answer from the minister, why he believes that's an appropriate amendment to place, or if there was an error, why it got past him. I want to know how he went through that process of reviewing those amendments.

I want to know why he believes, when all of the hospital sector coming forward asked for a very clear indication that the hospital restructuring commission would work in an advisory way with the minister to perform duties as assigned but that powers would not be delegated to that commission, why in fact that's the amendment that he approved to come before this committee to be added to the legislation.

There are many other areas where I want the minister's answers as to why he believes these are the appropriate amendments. The minister was not with us during these hearings. I'm assuming that the dialogue that took place was reported back to him by members of the committee, of what the presentations were, I'm assuming that he read Hansard, that he is fully aware of the presentations that were made. Therefore, I want to know why, when he reviewed personally every word of those amendments, he felt they were appropriate to agree to, given the kind of implications we are aware of in terms of some of those amendments and what had been pointed out to us by presenters.

Ms Johns, with all respect, cannot answer those questions and Ms Johns is not responsible at the end of the day for having approved the amendments that are coming before this committee now to Bill 26. At the end of the day she is not responsible for the management of the health care system in this province; the minister is. There are fundamental changes that are taking place here and there are amendments which are not clear what the intent of the government is with respect to it. The minister is the one who is ultimately responsible and should be here to explain to the public and the committee and to defend to the public and the committee the actions and the decisions that he personally took with respect to these amendments.

I request that committee members support this motion, which simply says that we request that minister to appear and that this request be forwarded as soon as possible.

Mrs Caplan: I will be brief. I sat in the chair of the Minister of Health and I believed then and I believe now that the minister must be responsible for explaining policy changes. The minister must be responsible for explaining implications. The minister must also be responsible for having some discussion before a bill is passed as to what effect the intention of the bill is going to have on the delivery of health services, what his intended result is going to be as a result of the changes to the substantial number of pieces of health legislation.

I agreed and remained quiet—relatively quiet, although I did object—when you made your ruling that the parliamentary assistant, Mrs Johns, would in fact not be representative of the minister and that she was not answering questions on policy during the hearings, policy questions that people asked and deserved an answer to. The reason I didn't make a fuss about that, although I did express my disappointment, was because I fully expected that the minister would be here during clause-by-clause discussion to answer those questions.

To be now told that he's not going to be here is wrong, absolutely wrong, and it's also wrong because that's not what we were led to believe. We were led to believe that the ministers would be here to defend their policy decisions. This is a warning, and I see a number of members of the Conservative caucus sitting here who are going to have to defend this bill back in their own home towns, but I issue this as a warning. If your cavalier attitude to democracy continues, the people will punish you. They do not like bills being railroaded through this Legislature and they do not like ministers remaining silent when it comes to policy. They must be accountable.

Mr Phillips: I'm just trying to appeal to logic here and to say to the government members that there's no reason why they should not support this motion. You are trying to put through a bill that fundamentally changes Ontario, and you are trying to put it through with as little debate as possible. Frankly, we've now got 139 amendments.

Mr Gerretsen: One hundred and thirty-nine?

Mr Phillips: I lost the bet. I thought there'd be about 85. We now have 139.

Mr Gerretsen: We had a pool.

Mr Phillips: And we were all low, by the way.

Mr Cooke: That's right, even the winner.

Mr Phillips: Even the winner was low.

Mr Gerretsen: I had 200.

Mr Phillips: One hundred and thirty-nine amendments. But surely from the public's perception, we're not going to get through this this week.

Mrs Helen Johns (Huron): Not at this rate.

Mr Phillips: No. There you go, you see, not at this rate, because we're trying to have a debate around the ministers coming here and explaining what they're intending by this bill, having some courage. They're in their offices right now watching this, the ministers. The Minister of Health is watching this. Leach is sitting over there somewhere embarrassed to come out, his face red. Actually, the most extraordinary thing was someone who calls for his own resignation and then proves that he should resign. It's extraordinary. But why doesn't he have the courage to come here and explain why he originally called for his own resignation?

Mr Cooke: And then blames the amendments on the opposition.

Mr Phillips: Yes. But the point from the public's perception is this: They are owed an explanation of what you are intending with this bill.

Mrs Caplan: Exactly right.

Mr Phillips: Al Leach has made some major amendments to the bill. Many municipal leaders came and spoke in favour of the bill for reasons that no longer exist

in the bill. So we have the embarrassment of some mayors who were called and asked, "Come on down and lend your shoulder to this bill." They came down and supported it, and now we find, as we look through these amendments, that Al Leach has undermined them. He has taken away things they thought were in the bill.

He owes those people a personal explanation, sitting there and explaining it, and I find it insulting that the Minister of Health, the Minister of Municipal Affairs, the Minister of Labour, the Minister of Finance don't have the courage and the decency to come here and explain what they intend by this bill.

It is symptomatic of the process we've gone through. Originally, just to refresh our memories, the government said, "We are going to ram this bill through in two weeks," and introduced it when most of us were locked up, November 29. I think everyone in opposition here was in a lockup, and the government knew that. We were in a lockup till 4 o'clock. They introduced this at 3:30 in the Legislature, trying to minimize the debate, and said they wanted it through in two weeks.

Finally, we forced some hearings on it, and then I'll just give you two or three examples in the hearings. We were told throughout the hearings no amendments would be tabled until the process was over, until the hearings were over. At 9 o'clock we were in Thunder Bay and Mr Sampson gave us this lecture. "There will be no amendments to this bill until we begin clause-by-clause," this morning, Monday. That was last week on Wednesday at 9 o'clock.

At exactly that moment, about 1,200 kilometres away in Kitchener, the government was tabling I think 50 amendments. So out of one side of their mouth they were saying, "We're not going to table any amendments," and out of the other side of their mouth, 1,200 kilometres away, they tabled amendments at that very moment. The very next day, finally Mr Sampson was ordered to table some amendments.

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Mr Gerretsen: After the municipal leaders presented.

Mr Phillips: That's right. My colleague makes a point. He tabled several in the morning and then he was going to table one at 1 o'clock, but the wardens from that area were presenting and the amendment that was going to be tabled at 1 didn't do what the wardens wanted so the amendment was tabled at 2 o'clock. Not at 1 o'clock but at 2 o'clock. Then at 5:30 on Friday in Peterborough, we got another stack of amendments, one of which contradicted the amendment from the previous day.

Why am I going through all of this? It's because I think the public should understand what the government's attempting to do here: ram something through, not debate it, try and keep the public in the dark, thumb your nose at the public, and this is the latest example.

I believed I had an undertaking, a commitment, by the government that the cabinet ministers would be here to explain their amendments and I am extremely angry that they don't have the courage to come here this morning and explain their amendments. There can be no other explanation for it—no other explanation.

What could be more important than explaining what they're attempting to do in this bill? This is supposed to

be your big bill. You wanted to get it through in two weeks. You put a gun to our heads and said, "You've got to have this important bill." If it's so important to the people of Ontario, isn't it important enough that a cabinet minister can come over here and spend an hour with us and explain to ourselves and, I might add, more important, to the public? Because as one person this morning said, there are fundamental changes in here that they have no idea what they are.

I appeal simply to fair play, decency and your public spiritedness. What is possibly wrong with picking up the phone and asking, instructing, begging your cabinet ministers to get over here and explain what they're intending by this bill? Surely we're owed that much.

The Chair: Mr Clement.

Mrs Caplan: Let's hear how you defend them.

Mr Clement: Three points to make with respect to the particular motion moved by Ms Lankin. Firstly, despite the extraordinary circumstances in which we find ourselves today, it is not extraordinary to have the parliamentary assistant have carriage over the legislation in committee. Mr Wessinger, who was a member of the former government party, did so on behalf of the Health minister I would say almost exclusively—

Mrs Caplan: But all the way through.

Mr Clement: —as far as I've been able to research in this short period of time. So that really is the rule rather than the exception.

Mrs Caplan: From the beginning. From day one.

The Chair: Mr Clement has the floor, please.

Mr Clement: I think that's the way it should be. I'm sure Mr Wessinger was there for a lot of the hearings, heard what the public would have to say on a particular piece of legislation and would be able to combine, just as our parliamentary assistants are able to combine their understanding of what they had heard from the people of Ontario at these hearings with the goals of the ministry and with the strategy of the ministry in question. They are able to do that.

With respect to the supposed lack of responsibility and accountability of a minister, I would remind the honourable members that a minister is accountable through the Legislature. It's the minister who has to stand up day in and day out when the Legislature is sitting to defend that legislation.

Mr Phillips: That's exactly the point.

Mr Clement: That right of the opposition is still in place, and certainly the other safeguard that our democratic system has in place is the fourth estate, the media. The press have the right under our system, and frequently do so, to put the minister on the spot and held accountable.

Mr Phillips: Save us, press, save us.

Mr Clement: Thirdly, I would just like to make this point for the record—

Mr Cooke: Get him into a scrum. Maybe he'll offer to resign again.

Mr Clement: For the record, the members opposite have been quite consistent in the view that there are numerous changes to the status quo that are represented in this legislation, and they are correct. But I would argue

with them on this point: The status quo, as it had existed, was a deteriorating status quo. The status quo meant more hospital beds lost. It meant less opportunity to help with palliative care. It meant less opportunity for municipalities to solve their problems. That was the deteriorating status quo and there was no possibility of discussion with respect to that.

Through our bill, there is at least this opportunity to discuss, to hear from the people, to work on how to change the status quo for the better—

Mrs Caplan: There's no process in your bill.

Mr Clement: I would say that this is better than the way previous governments acted, which was to bury their heads in the sand and let the status quo deteriorate without any meaningful debate. I would speak against this motion.

Mr Cooke: Mr Chair, I'll be very brief. I think it's important that we realize or understand the process over the next week. We've got five days here in committee and then the bill does not go back into the House to go into committee of the whole, where in fact there is an opportunity not just to review the amendments but to ask questions of the minister on an ongoing basis in committee of the whole and get explanations of what the amendments mean, what the impact will be, why those amendments are coming forward. We have no committee of the whole stage because we agreed to this process of having a week in standing committee.

Quite frankly, I can speak for myself, and I think the Liberal House leader would agree if he were here, we just assumed that on a bill that—this is the flagship of the Tory government. This is the implementation, as they say, of the Common Sense Revolution, even if it's going to be amended and amend the amendments and so forth. I would have thought the Deputy Premier and the ministers would not only have wanted to appear here, but would have been damned proud to appear before the committee, because this is their agenda.

Not in my wildest dreams did I believe the government would say in that final week: "The ministers are not allowed to come forward. We're not going to put them in the position where they have to answer questions. We're going to put in the parliamentary assistants." I'm quite frankly surprised that the parliamentary assistants have allowed this to happen. I remember in dealing with a particular bill that I was responsible for, I had some scheduling errors, and the reason my scheduling errors were corrected and I appeared before committee is because my own backbenchers said: "You're coming before the committee. We need you there to answer some questions that the opposition has."

I'm surprised that the Tory members here are—I guess this is an indication of where they'll be for the next five years, that whatever a cabinet minister says is what they will dutifully follow, and they will play no significant role whatsoever other than to occasionally be the mouthpiece of a cabinet minister when they're told to do so. But the accountability role is absent if they're not coming before us.

We know the Minister of Health has not reviewed the amendments. He was out of town; he was on vacation.

We know that he didn't review the amendments. That's why he doesn't want to come forward, because he's not up to date. He's not in a position to defend those amendments. He didn't even review them. There is no ministerial accountability. These amendments, I suppose, were approved by the whiz kids in the Premier's office. Politicians were shut out of the process, and now these folks here have been told: "Go defend it for a week. We'll get the bill passed next week and that's the end of the process. We don't give a damn about what anybody said in the last three weeks." I think it's a disgrace and that the Tory members of this committee—and Mr Clement, to actually speak here and try to defend the process, he should know better and just sit there and shut up, rather than trying to defend a process that's absolutely indefensible.

Mr Silipo: Mr Chair, I wonder, before we proceed to a vote on this, whether the government members might not want to take a moment and reflect on what they're about to do, because I think they should realize that they're about to cause themselves, let alone the parliamentary process, severe harm by voting against this motion, which, after all, simply requests that the Minister of Health appear before this committee. I take from Mr Clement's position that this would be the position of the government members, to vote against this request and presumably all of the others that will follow.

I would suggest that the government members might want to reflect on that. I would offer on our behalf, if it's helpful, that the committee recess for five to 10 minutes so the government members might want to reflect on that, perhaps pick up the phone, call some of their ministers and really, really understand what they're doing and really conclude whether they want to do what they're about to do. So we make that offer, Mr Chair, if it's helpful, to get us through what I think is going to otherwise be an even more difficult process than it needs to be this week.

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Mr Curling: I do regard this, really, the refusal of the minister to come before the committee, as almost sabotaging the whole process or an insult to the whole democratic process. It is important that he comes. More than that, we did not get any answers out of any of the government members there when we attempted to get some explanation of the directions and the purpose of this bill.

We know what the purpose is. We have come to the conclusion that they want to dictate anything that they say, anything that they want. The reason I think it is so important that the minister comes—as we went around the province, and not only to the areas that were assigned by the House but the unassigned areas, people were asking us: "What can we do? What explanation do we have for this part of the legislation?" The offer that I gave to them was that I did not know, I confess, because one day in one city it means that, and the next city a lawyer will interpret it another way and another professional organization would say it would have another impact on them. When I at times revealed to some of the mayors around the province that this has an impact this way on them,

they said they didn't know. My colleague Mr Phillips at one time stated that someone appeared before a committee who was in favour in some respects of the direction the government had gone, and by the end of the presentation they had more concerns than those who were against it. My feeling is that it needs the minister here to tell us exactly what the intent of this bill is.

The other point I want to make as to why it's important to be here: They seem to want to move to some even drastic measures to get the attention of the minister and to get the attention of this government. I said: "No, we believe in the process. I believe we are able to convince the members over there that they can bring the minister to explain some of the confusion that's in this bill." To be told now that the minister will not be coming I say is an insult to the process.

As an example, when I was the Minister of Housing, we had a very, very difficult bill, Bill 51, the landlord and tenant bill. We had about five weeks of hearings. I sat on every hearing, Mr Chair, because it was so important for me not only to understand the desires and the aspirations and what laws my government at the time was instituting on the people, but to be able to come back to make proper amendments as to what people had stated.

Now, the minister did not appear at any of these. The parliamentary assistants here did not know what they're talking about. Some ministers themselves admitted openly in the House that it's a complex bill and they haven't read it in detail. We are saying now you have had an opportunity, although we had to do some extraordinary things to bring it to today; you have had some time in which to read the bill and have some explanation. I am saying that you still have not—I'm talking to those members who are sitting on the committee—been properly informed, as they said, on what the whiz kids have dreamed up, what they find this tool should be—someone said a sledgehammer—in this restructuring bill.

So it's important, so important, that we bring the minister here, and if he doesn't understand it, we appreciate that—we could go through that; it's difficult—so we can have some explanation to this. Because as the days go on, we'll be asking the parliamentary assistant to explain, and it will not be acceptable to tell them they have to go back and check with the minister to find out what he means or to check with the whiz kids to tell the minister to tell them what it means. It will not be acceptable.

We hope that in appealing to you over there in a matter of decency, a matter of democracy, in the art of openness, that you have nothing to hide, that you can bring the minister here. I hope you change your mind and your votes.

Mr Gerretsen: As a newcomer to provincial Parliament, and I think I'm the only one, with Ms Papatello, on this side of the table who is in that position, together with all the members on the government side, who I believe are all newly elected this time around on June 8, I find it somewhat extraordinary, quite frankly, that we had the ministers here on the first day, I believe for an hour. There's so much in this bill that we only had an opportunity, I believe, to really question one minister—there

may have been actually two—out of the three or four who were there that day.

We've got some major changes that have been suggested in the amendments. As a matter of fact, one day the Minister of Municipal Affairs even walked into a meeting when the mayor of Mississauga was giving evidence. It's my understanding he walked in because he thought she was going to be totally in favour of what was being suggested, which she was, but for a totally different reason. That dealt with the gas tax situation. I can still remember, in answer to a question that I asked and I believe Mr Phillips as well, "Are you in favour of a gas tax?" "Oh, of course." "And a number of other things?" "Yes, we may very well need these things," at which point in time the minister decided not to have a media photo op with the mayor of Mississauga, because obviously his interpretation was different. It's very interesting. In one of the amendments that you have here, you're saying, "No gas tax." I wonder how the mayor of Mississauga feels about that today, by the way. I'm sure she has a totally different view.

The point is this: Here the man came into the meeting for no reason other than to be supportive of a mayor who he thought was supportive of the position. Now we've got some major amendments dealing with that act and with many of the other acts and you refuse to deliver these people to us so that we could at least ask them questions. I can only assume that you're not doing so for one of about three reasons: (1) they don't know anything about the amendments, (2) they know what the amendments are but can't explain them, or (3) they can't explain why they're now taking a different position than they did initially.

I've heard Mr Sampson, and he will say, "Well, we've listened to the public." Right. The public has input into this in the same way that the government has input into it and the opposition has input into it. You're not going to tell me that the only reason why you're filing these amendments is because the public have persuaded you to do so. There's got to be another reason as well. There's got to be a reason dealing with either ministerial accountability or it no longer makes any sense for those ministries to have those kinds of powers that you're talking about in this bill. There's got to be something else to it, and we want to know what those reasons are.

We can go through all sorts of nonsense here and sooner or later the ministers will be asked as to why they're in favour of various amendments in any event. I would think it would be a lot better for the public policy process in Ontario for those people to come here at some stage. We don't want to take up their whole day. Let them come one at a time. They don't have to appear all four or five together, or 10, however many are involved.

Mrs Caplan: Just within reason.

Mr Gerretsen: Let's draw up a schedule now. Let's find out what their schedule is and see if some time during this week, the sooner the better, they can be here on a one-to-one basis so that we can actually discuss the amendments with them.

The Chair: If there's no further discussion on the motion, we'll call for a vote.

Mr Cooke: A recorded vote.

Ayes

Caplan, Gerretsen, Lankin, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: That motion is defeated.

Mr Silipo: I move that the Minister of Finance, the Honourable Ernie Eves, be requested to appear before the standing committee on general government for clause-by-clause consideration of Bill 26.

The Chair: In view of the fact that our purpose here is to get to the clause-by-clause discussion, have we any all-party interest in limiting the debate, since these motions are substantially the same?

Mr Silipo: We don't intend to be very long on these, Mr Chair, if that helps. Just very briefly, because we're not going to repeat the points that have been made, I would have thought that with respect to the Minister of Finance—the point's already been made, I believe—his name is the minister's name that appears on the bill. It's telling that he has not chosen to appear before this committee and I guess will not appear before this committee.

I think that's particularly telling in terms of the government's stated position that there's only one taxpayer, yet we know that this, being the budget bill of this government, makes significant changes to the taxing powers that are being given to municipalities, makes significant changes to the way in which the wealth of this province is being redistributed. It would have been incumbent, we feel, for the Minister of Finance to have had the courtesy to appear before the committee, and that's what this motion requests him to do.

Mr Phillips: Just to speak on the motion, I think firstly he owes us an explanation of why so much is in this bill. We in our party, and I think the New Democratic Party, have been quite prepared to deal with the matters that he believes are absolutely fundamental to dealing with the fiscal situation in the province. But in this bill are freedom of information, major changes to the Mining Act, the Game and Fish Act, to I think 43 different acts. I think he owes an explanation to us why he put all that in and why we and the people of Ontario can't have the courtesy of taking the portions of this bill that he does not need to deal with these financial matters and having some reasonable debate around them.

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I can only conclude that it was incompetence, that originally the bill perhaps was designed to deal with the financial matters and then word got out that "There's going to be a big party and if you come to it, you're going to get your legislation passed." So everything's jammed in here, every ministry's wish list, from freedom of information to the Mining Act to the Game and Fish Act, and you're trying to ram it all through at once.

He owes us an explanation of how in the world that happened, because it's bad enough that people are mad at you, but people are laughing at you now. People are

finding you incompetent. People are wondering how in the world any organization that purports to want to run the province could allow this to happen. You said there were no amendments necessary, it's going to pass in two weeks, and then you've filed now 139 amendments and we have no assurance there aren't going to be a lot more amendments.

The second thing is that only he, I guess, has the power to do what we in the opposition have been advocating; that is, take the sections of the bill that don't have to be rammed through on January 29 and allow for a reasoned debate on them. But in the final analysis, unfortunately for him, his name's on this bill and somebody allowed this mess to be put together. We thought the patient was terminally ill when you brought it in on November 29, and now we're sort of in emergency surgery. You're trying to patch up this botched operation. I think he owes an explanation of how in the world we got to this place and to help identify those sections of the bill that he doesn't absolutely need next Monday and allow for some reasoned debate on it. I think that's why Mr Eves should be here and why the motion is in order.

Mr Sampson: I just want to clarify a few things. The comment was made earlier by one of the honourable members that this is the budget bill of this government. This is not the budget bill of this government and he knows that this is not the budget bill of this government. "There are linkages attached to the economic statement." That was a comment that I picked off of what I heard just a few minutes ago, that there are linkages to the economic statement.

This is the bill this government intends to implement to be able to give us the ability to respond to the promises we made to the voters of this province during the election, which was to significantly change the way in which we're governed in this province, not to make tinkering changes here or there. That commitment, frankly, stretched across ministries, which is why this bill deals with Mining Act issues, deals with finance issues, deals with health issues, deals with freedom of information act issues. Our commitment to the province of Ontario and the voters in this province was to make real change, and we're doing that. This is not tinkering. We're not prepared and the province of Ontario—

Mr Cooke: Why won't your boss come here?

Ms Lankin: Why won't Ernie come?

Mr Sampson: —is no longer in the position to reflect the tinkering.

Ms Lankin: Thanks. We appreciate your advice on this.

Mr Silipo: That's exactly why he should be here.

The Chair: Mr Sampson has the floor. I fail to understand why, when people on this side of the floor speak, there is absolute silence; when people on this side of the floor speak, there are always interjections. I think it would be fair to allow the person to have the floor.

Mr Silipo: Mr Chair, on a point of order, I would hope that your comment just now is not an indication of the way the rest of the week is going to flow. You're supposed to be an impartial Chair. Please remember that.

The Chair: And I am. I'm just saying it would be nice if—

Mr Silipo: There were comments on the other side of the table made when people on this side have spoken.

The Chair: I'm just saying it would be fair if we treat one another with some respect.

Mr Silipo: Absolutely. That's the point of these motions.

Mr Sampson: The Minister of Finance is represented by his parliamentary assistant at this hearing.

Mr Silipo: Recorded vote.

The Chair: No further comment on the motion? Recorded vote.

Ayes

Caplan, Gerretsen, Lankin, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The motion is defeated.

Mr Silipo: I would move that the Minister of Municipal Affairs, the Honourable Al Leach, be requested to appear before the standing committee on general government for clause-by-clause consideration of Bill 26.

Mr Cooke will speak to this on our behalf.

The Chair: Does this require some debate?

Mr Silipo: Yes.

Mr Cooke: I will be brief. I feel particularly strongly about Mr Leach coming back before the committee because of comments he has made that amendments to the bill dealing with the taxing powers of municipalities were not necessary and publicly stating that he was going to resign if amendments were necessary, and then the amendments come forward and he still doesn't offer to resign.

I think there's a fundamental question here about competence that needs to be answered and an explanation about the amendments, both on the restructuring sections and on the taxing and licensing and user-fee powers for municipalities, that Mr Leach owes the committee and owes the public.

I think there's a side issue here that is of great concern to a lot of us: that this is the minister who is in charge of implementation of the Golden report and reorganization of the entire greater Toronto area. At this point, the competence, or incompetence, that he has demonstrated has made it very clear to all of us that not only should he resign because of the promise he made on the taxing issue, but he should resign because he has demonstrated, out of all the ministers involved with this fiasco called Bill 26, complete and total incompetence. He needs to come forward to demonstrate to us that he has at this point some understanding of the legislation or to indicate that he has in fact agreed that it would be best for him to leave.

I want to finish by saying that I think there's another aspect to the section dealing with municipalities that is absolutely essential. It has become absolutely clear during the public hearings that there has been a backroom deal done between the municipal sector and this provincial government that has resulted in changes to the arbitration process, pay equity, taxes and fees. I think it's very clear

that there has been this secret deal that has been done by the municipal sector, shutting out all the people of the province who are going to be affected by this. I think that it's an abuse of power and I'd like to know how this deal was achieved, how in fact this could be done in Ontario, where two levels of government, democratically elected, would be so undemocratic in the way that they determine public policy. So for that reason, for democratic reasons, and also for competence.

Mr Chair, I think that over the weeks of public hearings the incompetence of this process has been very clear. I think we should now be putting the proper name to this government. They liked to call us, in particular—when ever we had amendments to legislation they said we were incompetent. This is clearly a government of the Flintstones, and Mr Leach is Barney. We need to have him called before the committee so that he can explain to us—

Mr Gerretsen: That's an insult to Barney, you know.

Mr Cooke: Well, it is an insult to Barney, but I think he owes it to people to come and explain his actions.

Mr Phillips: I actually tend to agree with much of what Mr Cooke just said.

Mrs Caplan: It's scary.

Mr Phillips: I feel badly for the government members, because if there's one part above all that has been botched, it's the Municipal Affairs section. I remember we were on the road and the headline was something like, Leach Going to Take Charge of the GTA Study. He's going to allow 90 days for debate and then he's bringing in an omnibus bill.

I hope I'm not being unfair to the Conservative members, but it was very hard on their breakfast. He hadn't finished the operation on this bill yet—and believe me, it's botched; he's going to leave some instruments in this body—and he's heading off to operate in the room next door on the GTA. It's a frightening sight. I have a feeling that he may not be the chief surgeon. If he is, he'll have some competent surgeons looking over his shoulder.

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There is no question that the Minister of Municipal Affairs and the Association of Municipalities of Ontario had a huge input into this bill. The problem is that there are a lot of other organizations that were sacrificed as a result of that. There's no doubt, on the arbitration process, it fundamentally changes for our fire, police, hospitals, our essential services, our teachers. It fundamentally changes bargaining for them. Frankly, the amendments were tabled at 5:30 on Friday night in Peterborough, and I'm not sure they've yet fixed the problem of direct taxation at the municipal level.

Mr Gerretsen: No, they have not.

Mr Phillips: On the licensing provisions, the city of Kingston believes that the way the bill is currently written, with the amendments, it still permits a gas tax to be administered through the licensing provision, not the fee provision. He owes us an explanation of what is his intent in that area.

On the restructuring provisions, frankly most municipalities had been led to believe that there would be changes, amendments to accommodate their concerns. Once again, the mayor of Peterborough was there with

concerns at 10 o'clock Friday night in Peterborough, but he never had a chance to look at the amendment that was proposed, that didn't answer his concerns, tabled at 5:30.

The reason I raise all of that is, if there was one group that came out in support of the bill, it was municipalities. The problem is that some of the reasons they thought they were supporting the bill apparently no longer exist. Some of the amendments that they had I think been promised do not exist. So I think the Minister of Municipal Affairs owes us an explanation of just what in the world he is trying to do here.

I'm not sure which of the three scenarios my colleague outlined—whether he doesn't want to come because he can't explain them, doesn't want to come because they go in a direction that he's promised other people he wouldn't go in, or whether he simply doesn't know what in the world's happening and somebody else is trying to—

Mr Gerretsen: All three, Gerry.

Mr Phillips: —save his political career. But whatever it is, surely we're owed that. If he had time to come for what he thought was going to be a positive photo op, he had time to make his way over from his big office to do that, surely he has time to come over and explain what in the world he's trying to do with this bill.

Mr Chair, I urge you to put some careful thought into this because, in the final analysis, it's you people they're hanging out to dry. You're the suckers in this and they're sitting back in their offices unwilling to come over here and explain what they're intending and hoping they can simply get by this week, zipper this thing up at 6 o'clock on Friday, stuff all the amendments in it, wheel it upstairs Monday for a vote on this basically dead bill.

Mr Ernie Hardeman (Oxford): First of all, I'd like to point out that the Minister of Municipal Affairs did appear before the committee the first day of the hearings. The issue that's being questioned by the opposition is the ability to charge gasoline and income taxes. The minister made it quite clear in that statement that in his opinion the act did not allow charging of such a tax.

Mr Cooke: Nobody else in the province agreed.

Mr Hardeman: There were others who put forward the position that, as they read the bill, it would be possible. I sat through most of the hours of the hearings and I don't believe there was anyone who said that it was certain that they could, but there was some doubt cast by some who appeared before the committee that it could be done. In order to correct that situation, the minister has approved an amendment, put forward the amendment that we will be addressing when we get to that part of the bill, that makes it quite certain that that is not a possibility. I don't believe there was anyone here from the municipal sector who would be surprised by such an amendment, recognizing that the minister had made the statement at the start of the hearings that the act would not allow that type of taxation.

So I find it somewhat curious that the opposition at this time would decide it's inappropriate to put forward such an amendment to make sure we do not end up in court with municipalities in terms of what they can or cannot charge in taxation. What they want, I believe, is certainty as to what will or will not be allowed.

I also want to point out that the reason for the restructuring and that part of the act is that municipal government also needs to deal with the financial situation of the day, which is that we need less government and have less money to pay for that. They need the ability to do that.

Many presenters before the committee came forward with the concern that there was not enough public involvement in the process as it was written in the legislation. There again, the minister has approved an amendment to be put forward that will legislate the minimum type of public involvement obligated to be put forward through the commission process.

The amendments are dealing with concerns expressed by the people who appeared before the committee. I suggest that's what the process was supposed to do, and I'm proud to be here to see that it's working.

The Chair: No further discussion on the motion?

Mr Silipo: Recorded vote.

Ayes

Caplan, Gerretsen, Lankin, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The motion is defeated.

Mr Silipo: In order to be helpful, I'm going to combine the remaining three motions into one, if that's acceptable.

I move that the Chair of Management Board, the Honourable David Johnson; the Minister of Labour, the Honourable Elizabeth Witmer; and the Minister of Natural Resources, the Honourable Chris Hodgson, be requested to appear before the standing committee on general government for clause-by-clause consideration of Bill 26.

Each of these ministers, were they to come before us, I think we would want them to explain why some very important changes in Bill 26 are being proceeded with by the government notwithstanding what we have heard during the hearings.

In the case of the Chair of Management Board, we know that one of the things this bill does is take away the pension rights of thousands of public servants who work for the government. The incredible thing about this is that the government is giving itself the power to break the law. This legislation allows it to override decisions the courts of this province have made saying that what this government is about to do is illegal, and that is the astounding thing. I can put it no more clearly than in the words of one presenter, who said to us: "We knew this government would be pushing public servants out the door. We didn't realize that they'd be picking their pockets as they went out the door." That's exactly what this government is doing with this bill.

In the case of the Minister of Labour, it's astounding that the rights to pay equity for 100,000 of the lowest-paid women in this province are being taken away by this legislation and the Minister of Labour has not appeared and will likely not appear before this committee to explain to us why that is being done and why the govern-

ment is causing the absurd result, as a result of this legislation, that some women will have the right to pay equity and others will not and those who will not will be among the lowest-paid women in this province.

We also know there are significant changes to the labour relations area by way of changes to the arbitration processes coming through this bill, which, as we saw them initially, were really no more than wage controls by the back door. Although some changes have been made, and particularly because in this area one important amendment is being tabled by the government, I think it would be incumbent upon the Minister of Labour to be here to explain to us what that amendment really means, because as I see it, it can be read in two different ways. It can be read that it's loosening up the rules or it can be read that it's tightening up the rules. I think all sorts of problems will be caused by that particular amendment because of the uncertainty it's causing.

In the case of the Minister of Natural Resources, we heard a lot of concerns about the mine closures, the conservation authority changes being proposed by this bill, all of which were underlined very clearly by the fact that the environmental commissioner of this province, someone appointed by agreement of all three parties, I must say, saw fit to issue a special report, which in and of itself is an unusual situation, condemning the government exempting Bill 26 from the applications of the Environmental Bill of Rights. For those reasons and many more, it would have been incumbent upon the Minister of Natural Resources to come back to this committee to explain why the government is proceeding with the changes it is, in light, again, of the comments we heard during the hearings.

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Mrs Caplan: I agree with all the comments Mr Silipo has made. I think it is extremely important that these ministers in particular come before this committee, because I don't think the public has the faintest idea that these things are actually happening. I'm only going to give one example, and that is the example of the changes to the pension plan. Every employer who has undergone restructuring in the province has been bound and will continue to be bound by this legislation, with one exception: the province of Ontario. They are exempting themselves from a provision that is required of every other employer in the province. Surely the minister should be here to justify that kind of extraordinary change for only the province.

Those are the kinds of things put into this bill which have nothing to do with the most significant parts of the bill, which are health and municipal affairs; we know those are the two parts that have been focused on. But in terms of the provisions referred to by Mr Silipo, those that affect the ministries of Labour, Natural Resources and most especially Management Board, we have not had the opportunity to discuss in any way their policy implications, and we've had very few public presentations about those either. If government members on this committee believe they were elected to come here to make good law, they would want to have those questions answered as well.

I believe it's important for the Minister of Health to be here, I believe it's important for the Minister of Municipal Affairs to be here, but these three are equally important, and I hope the government members would think about why they were elected. I hope they would think about this reasonable request to have the ministers come to explain and defend their policy. That is reasonable when you're making new law.

Mr Sampson: We're just a little over two hours into this proceeding, and I'm already dizzy trying to follow the logic of the members of the opposition on a number of the points they've talked to so far.

We started off the hearings and they said, "We want you to table your amendments immediately"—the first day into the hearings. But then in the same breath they said: "No, we would like you to listen to the people of Ontario before you proceed further. We need further consultation. In fact, we need you to extend the hearings." I'm having difficulty following the logic of that one.

Then we heard, as to the changes on the municipal side, "The reason the sections in the current bill are the way they are is that you've cut this deal with AMO in the back rooms." Then in the same breath we hear them say the municipalities aren't happy with the bill. If we cut a deal with AMO, then how is it the municipalities aren't happy with the bill? Ladies and gentlemen of the opposition, I'm afraid you can't have it both ways.

You say: "The ministers are incompetent; they don't know anything that's in this bill. But, Mr Chairman, we want them in front of us to explain the bill." What is this? I'm having extreme difficulty following the logic of this.

The members opposite know full well the procedures in—

Mr Cooke: So we can take your no vote as meaning that you agree with us that they're all incompetent and they shouldn't come before the committee.

Mr Sampson: Well, I've clearly identified to the members opposite their logic problem, because I note they want to interject every time I raise that.

Mr Chairman, I said earlier that the PAs will be here in the absence of the ministers, when the ministers are not here, to deal with the questions raised as we go through clause-by-clause debate, which I hope we can get to shortly.

Mr Gerretsen: Just a couple of points: These amendments in the municipal section are significant changes, where they deal with the restructuring and direct taxation aspects, from the bill the way it was originally proposed. We had the anomaly, in the presentations brought before the subcommittee, that basically the municipalities agreed with the proposed changes because they thought they were getting greater direct taxation powers, and we had the chambers of commerce come before us and agree with the bill as well, but they didn't agree with the fact that the municipalities were getting more power in terms of direct taxation. So you had two groups basically saying the same thing but for totally different reasons.

The point we're trying to make is that the changes now being proposed to schedule M significantly alter the original intent of schedule M.

Interjection.

Mr Gerretsen: That's true. Just read it, okay?

The other point I want to make is with respect to the pension matter. We had a number of presentations in front of our subcommittee on the pension matter and the one that struck most home to me was with respect to a 48-year-old individual who, under the new regulations, would not be entitled to a pension until he was 55 or 60—I'm not sure—whereas under the old regulations he would have been entitled to a reduced pension at age 50. To that individual, with a salary of I believe about \$24,000, it was going to make a difference of almost \$300,000 over the lifetime of that pension up to age 82, which is the average life expectancy for a person that age.

I think it's incumbent for everyone in the province to know the major changes being contemplated by that particular pension section. If the Chairman of Management Board cannot come here to explain exactly what he had in mind with respect to schedule L, I think it's a travesty, not only the way this government deals with the people of Ontario but also the way it deals with its own employees.

I ask you again, Mr Chairman, to make the request to each of these individual ministers to come to this hearing at some point in time during this week so we can at least have them explain to us why they're making the major changes they're contemplating in the act—well, I know why they're doing it, but at least give the people of Ontario an explanation of why they're doing it—and also why they're doing some of the major amendments.

Ms Lankin: Recorded vote.

The Chair: A recorded vote.

Ayes

Caplan, Gerretsen, Lankin, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The motion is defeated.

Ms Lankin: Mr Chair, there were two other motions I had tabled. One had to do with the orders of proceeding and opening statements from parties. Given how the morning has unfolded thus far, I withdraw that motion. I think it's not necessary.

The second motion was with respect to an authorization for this committee to meet for the purposes of public review of all regulations related to Bill 26 prior to the act coming into force. I have tabled that and I will give notice that at some point later in the week I will move that. I don't think that needs to be debated this morning.

I do, however, have one other motion that I would like to table. I have it in writing but I don't have copies.

I move that the parliamentary assistants who have carriage of the bill be given 30 minutes each to present the government amendments, followed by 30 minutes for questions from the opposition parties (split equally) to each PA, beginning immediately with Ms Johns.

The Chair: Does everybody understand? Any debate on the motion?

Mr Clement: Could we get some clarification, Mr Chairman, about how you feel about what is within the powers of this committee to—

The Chair: I'll read the motion again.

Ms Lankin moves "that the parliamentary assistants who have carriage of the bill be given 30 minutes each to present the government amendments, followed by 30 minutes for questions from the opposition parties (split equally) to each PA, beginning immediately with Ms Johns."

Did you want to speak on the motion, Ms Lankin?

Ms Lankin: Mr Cooke would like to speak to it.

Mr Cooke: Mr Chair, given the fact that we've just been lectured for the last hour and a half that ministers are not coming before the committee and, as Mr Sampson said, that the parliamentary assistants are fully briefed, fully up-to-date on every amendment, every reason for every amendment, and can defend the bill before the committee, this is not an unusual request: that there be some time at the beginning of the proceedings that the government would explain their amendments to us and to all the other people who have participated in the hearings; that this be allowed to occur and that there be some opportunity for the opposition parties to question the government on the rationale.

We've been told for the last hour and a half that the parliamentary assistants are carrying the bill, so I think this is very reasonable. I think this will actually encourage the process over the next five days to work efficiently and I think that's the most important part of it. It will mean that the hearings or the process over the next few days will be very efficient.

I cannot, on this one, see any reason why the government could possibly vote against this. I expect it to be passed and I certainly encourage the members to support it. Of course, if they vote against it, we can only assume that the members are voting against it because, one, they don't have confidence in their amendments and, two, they don't have confidence in the three PAs.

Mr Phillips: The only reason I'm speaking is because I just assume this will carry, but in case there's any hesitation, I want to make sure that we just go over the reason for it. I was fully expecting the ministers to be here this morning. I told my caucus I thought we had an undertaking back in December that that would happen. I raised it last week in the committee in the expectation that it would happen. I'm very disappointed they're not here. This is a compromise that I support. I would much prefer the ministers to be here.

But let's just recognize that there are thousands and thousands of people out there who are following this proceeding very closely because you're going to impact on their lives very directly. They've presented to the committee, the ones who could get on, the one third that could get on, the two thirds tried to. They want to know what is in this bill. The risk right now with the 139 amendments is that people who are desperately interested in the municipal sector or the health sector or the mining sector or the arbitration will never have their issue debated. So Ms Lankin's motion is bang on.

The parliamentary assistants, who we understand are standing in for the ministers, fully understand it and can

outline for the committee and for the public the major changes and we'll have an opportunity to discuss them. As my colleague Mr Cooke said, I think the proceedings then can flow much more smoothly. We'll have some idea of where the government's heading on this bill. I can't imagine the government not welcoming this opportunity. Clearly it's an opportunity for the government to defend its bill, and I look forward to getting on with it very quickly.

Mr Clement: I'm sorry if I'm a bit thick this morning and I do apologize, but I'm not sure of the complete ramifications of this motion. Is this in addition to going through clause by clause? Is this a process in addition to that?

Ms Lankin: This is at the beginning, yes.

Mr Clement: So that subsequent to this exercise we would then go through the bill clause by clause?

Ms Lankin: Yes. Mr Chair, can I quickly clarify in answer to that? I realize I wrote it out hastily so it's not particularly well worded. The intent would be, starting with Ms Johns, that she has 30 minutes to present the amendments to the sections of the bill that she has carriage of and to give an explanation and a rationale overall of what the intent is. There would be 15 minutes for the Liberals to ask questions of Ms Johns, 15 minutes for myself. We would then move on to a similar process for the second and the third parliamentary assistants, and then we would be in a position to move into the clause-by-clause analysis of the sections of the bill.

Mr Cooke: Not much different than going clause by clause.

Ms Lankin: Very, very similar to other times when in fact a minister would come forward and would present an overview.

The Chair: Mr Clement, do you understand?

Mr Clement: Yes, I just had one further question of the mover, if I might, Mr Chair. Why are we starting with Ms Johns when schedule A is the first schedule of the bill?

Mr Cooke: Amend it.

Ms Lankin: If you want to amend the motion, you are free to. That is my motion, my request. I have been involved on the health sections, so I would like to begin with Ms Johns on the health sections.

Mr Cooke: That's a real vote of confidence, Tony.

Mr Clement: No, I'm just curious. It's a curiosity question.

Ms Lankin: I presume if we were dealing with ministers, we would deal with them in the order of their availability and their schedule, and I don't see that there's any difference. The clause-by-clause will go through in an orderly fashion. I'm just asking for a presentation.

Mr Clement: I would suggest, Mr Chair, if we could be allowed, since we did not know this motion was coming, just three minutes of recess so we can caucus on it rather than giving just a reaction without having the ability to discuss among ourselves.

Mr Gerretsen: We didn't discuss it. We're ready to vote on it.

The Chair: The rules state that you're entitled to up to a 20-minute recess at the time a question is put. If you want another recess, you need unanimous consent of the

committee for that. Five minutes, Mr Clement? We'll recess for five minutes.

The committee recessed from 1215 to 1225.

The Chair: The five minutes are up. That was the agreed-upon time for the discussion.

Mr Gerretsen: We're ready to vote, Mr Chair.

The Chair: Is there any further discussion on the motion?

Mrs Caplan: I think it's a reasonable motion. In the 10 years I've been here, the process has always been one where ministers appeared to answer their questions. We're perfectly ready for the vote right now.

The Chair: If there's no further discussion on the motion, all those in favour?

Ms Lankin: Recorded vote.

Ayes

Caplan, Gerretsen, Lankin, Phillips, Silipo.

The Chair: All those opposed? The motion carries.

Mr Cooke: I would like to move—

Ms Lankin: Could we split up the bill at this point?

The Chair: In view of the hour and in view of what the next process would be, since we're not locked into an actual time for lunch, should we take our lunch hour now?

Mr Cooke: I believe there may be a motion.

Mrs Caplan: I believe it might be appropriate at this time to actually move on to the first motion that we have placed, which would allow for the bill to be split.

The Chair: The order of business, as we just approved, is for the parliamentary assistant to the Minister of Health to immediately take the floor for 30 minutes. That was the motion we just approved, unless you want to change that motion.

Ms Lankin: She's not here.

Mrs Caplan: Where is she?

The Chair: She's not here. In the absence of that—

Mr Phillips: I can hear some emergency briefing going on.

Mrs Caplan: Could I suggest that we take another five minutes and give her a chance to get here? We have a full half-hour before the lunch break, and it would be a shame to waste the committee's time. If they're just outside, ask her to come in and let's get going.

The Chair: I would just suggest switching the lunch break for an hour now and then coming back.

Mr Phillips: I'm not sure where they are, but if that's helpful, as long as you can get their agreement that we'll start back up at 1:30. Is that fair?

The Chair: That's what I suggest in the interest of time.

Mrs Caplan: But I've made an appointment from 1 till 2.

Mr Gerretsen: Surely the government isn't filibustering these hearings now, are they? They're not here.

The Chair: What we're dealing with is a motion has been passed—

Ms Lankin: We could be so mischievous right now.

The Chair: I know you could.

Mr Phillips: We can't find the minister and now we can't find the committee.

Mrs Caplan: To be honest, I think the public and everyone else knows that this committee was scheduled to begin at 10 and go through till 1 and then reconvene at 2. Many of us had made appointments between 1 and 2.

Ms Lankin: I have actually.

Mrs Caplan: So have I. I don't think it's fair, half an hour before, to change the time. I'd rather give them five minutes to come in and begin.

The Chair: Okay, we'll just recess for five minutes and see if we can find them.

The committee recessed from 1228 to 1233.

The Chair: The next order of business.

Mr Clement: I'd like to move a motion that the previous motion that was passed by this committee be amended to commence with the parliamentary assistant responsible for schedules A to E.

Ms Lankin: On a point of order, Mr Chair: That appears to me to be a reconsideration motion and the member was not present in the room voting against it.

Mr Clement: It's a separate amendment.

The Chair: The motion is not in order, Mr Clement. It's contrary to the agreement of the motion that was just passed.

Our next order of business, according to the motion passed, is for Mrs Johns to make a 30-minute presentation on the amendments.

Mr Clement: I would like to move to recess for one-half hour.

The Chair: We need all-party unanimous consent for that. Do we have unanimous consent?

Mr Cooke: What's the purpose of the request?

Mr Clement: The purpose of the request is to provide this committee with the best information possible and to allow Ms Johns to be able to present in a way which is accurate and responsive to your concerns, precisely the intent of the motion that was previously passed.

Mr Cooke: That comment by Mr Clement is a complete vindication of the entire debate this morning that we need cabinet ministers before us, because what he has just said is that there needs to be another 30 minutes because the parliamentary assistants are not knowledgeable enough about the bill or the amendments. Bring the ministers here and quit this farce now.

The Chair: Do I take it we don't have unanimous consent?

Mr Cooke: What a farce.

Mr Phillips: Just on the motion, Mr Chair: This is turning into comedy hour. We originally thought we were going to have the cabinet ministers here to explain the legislation. I think the people of Ontario would simply assume that this would be the logical thing to do.

The government is so proud of this bill, so proud of its agenda, it's making significant amendments apparently, and you would think they would want to be here to explain it. We were then told, "No, there's no need for that because we have the parliamentary assistants here to explain it," the well-versed parliamentary assistants. Then we have the total embarrassment, the comedy, of saying, "We want a half-hour more to prepare."

Is it a surprise that we might be discussing these amendments today? Did the parliamentary assistants

arrive surprised that they perhaps had to know what was in it? Then for Mr Clement to say, "We want to make sure we give you the facts," we have some understanding of why he might say that, but surely even this incompetent government would have known that perhaps the government members should have arrived here this morning having some understanding of the amendments that are in the bill.

As I say, the problem that you're running into is that people now know you're not only, as I've said many times, mean-spirited, you're incompetent. This is turning into a joke. As I said, when you look in the dictionary in the future under "incompetent," there'll be "Bill 26 debate."

Mr Cooke: Take today's Hansard and Mr Clement's comments.

Mr Bart Maves (Niagara Falls): Just quickly, it's perfectly reasonable to ask for some time for the three PAs, who have just had a request thrown to them five minutes ago to make a half-hour presentation. The government left the room and I think was perfectly willing to go along with that motion. Simply, anyone who's asked to make a half-hour presentation out of the blue—

Mrs Caplan: It shouldn't be out of the blue.

Mr Maves: —I don't see that it's an impossible thing or illogical to let them have a few minutes to prepare.

It's got nothing to do with competence, it's something that was thrown at them and we are ready to go with the motion, we're in favour of the motion, but they're requesting some time to prepare so that their presentation might be an orderly one. That's not at all incompetent or illogical or unreasonable. It's perfectly reasonable, Mr Carroll. I think Mr Clement's request is perfectly reasonable.

Mrs Caplan: What is expected and what is reasonable is that the government caucus would come here today expecting that we would be debating this bill and that we would expect from them an opening statement, that we would expect from them an explanation of the amendments that are being tabled. What we expected, because that's what we were led to believe, was that the ministers would be here to do that. We were told that the ministers are not doing that, the parliamentary assistants will.

Ms Lankin: On a point of order, Mr Chair: You asked for unanimous consent. That wasn't granted. We're wasting time. Can we proceed?

Mr Clement: Mr Chairman, on a point of order: Is my motion in order in the first place?

The Chair: You cannot make a motion to recess.

Mr Clement: Can I make a motion to adjourn until 2 pm?

Mrs Caplan: I had the floor, Mr Chairman.

The Chair: Yes, you can.

Mr Clement: I would then so move.

Mr Cooke: This takes it all. After a couple of hours this morning of the government saying, "No, you're not having cabinet ministers," that they're not going to come and defend this bill or explain the amendments or what you've heard from the public hearings process and that your parliamentary assistants are fully capable and up-to-date and they can present the government's position, you now have the gall to say you're going to adjourn the

committee till 2 o'clock this afternoon because your parliamentary assistants are completely incompetent and are not able to defend the bill.

Mr Chair, they now are going to go out—this is unbelievable. We've had three weeks of public hearings. The bill was tabled back in November. Your members couldn't even get the bill the first day.

1240

This vindicates everything the public has been saying about this bill for the last month, that you people tried to ram this bill through and the public didn't understand it, and now your parliamentary assistants don't even understand it. You couldn't come back here for the vote. You're scrambling now to put a motion forward so you can have a rapid-fire briefing of the parliamentary assistant. You got up and voted for this bill en masse on second reading supporting it, and you have now admitted on TV to all the people of this province that you didn't even understand what you were voting for as parliamentary assistants and as MPPs.

This is a farce. This is an embarrassment. This is the height of incompetence—

The Chair: Excuse me, Mr Cooke.

Mr Cooke: —and, Mr Chair, you should not allow them to adjourn. You should force the committee to proceed so that all the people in this province can see the level of incompetence of this government.

The Chair: Excuse me, Mr Cooke. I was in error. Mr Clement did not have the floor to make a motion. Mrs Caplan had the floor.

Mrs Caplan: Thank you, Mr Chairman. That was going to be my next comment, that this motion is not in order because I do have the floor. Now that I know what his motion is going to be, I am appalled. What Mr Clement is saying to the people of this province is that this government still doesn't get it. You don't understand that you are going to have to defend your policies, you don't understand that you cannot ram this bill through without appropriate scrutiny, and you don't understand that the people of this province and the members of the opposition are not going to let you get away without that scrutiny.

It is perfectly acceptable and regular procedure in this democracy at the start of clause-by-clause deliberations for the government to defend its bill. It is expected that the minister or the parliamentary assistant will begin with an opening statement of about 30 minutes in length and then be available to answer detailed questions on the policy implications of the legislation. The fact that after discussions this morning, which began at 10 o'clock—it is now a quarter to 1—that you are asking for an adjournment until 2 o'clock, after you criticized all morning and turned down every motion to have the ministers come here and do this, is an admission of incompetence and an admission of an abuse of power.

Mr Chairman, I strongly suggest that Mr Clement not table that motion and that we get on with these hearings, or else the people of this province are going to fully understand that this bill in its entirety should be scrapped.

The Chair: I am going to have to call a two-minute recess myself to clarify something. We'll recess for two minutes.

The committee recessed from 1243 to 1244.

The Chair: All right. I'm going to back up a little bit, and I apologize for this. Mr Clement's original motion to recess I should have ruled was in order and it is debatable, so we have to go back to that particular motion.

Mr Clement: Mr Chairman, on a point of order: I'd like to withdraw that motion.

The Chair: Okay, motion withdrawn.

Mr Cooke: "Who's on first?"

The Chair: It's fun to be in the loop here. In view of that, I guess we're at the 30 minutes for Mrs Johns to make her presentation.

Ms Lankin: I think she's had enough briefing; we've wasted enough time, so we could begin.

The Chair: Mrs Johns, our decision to break at 1 o'clock is still in order, so we'll be looking at about 12 minutes and then the rest after lunch.

Mrs Johns: I'd like to thank you for this opportunity to speak. As you might guess, I've never been in committees before and I'm a little nervous about this whole process, so I hope you will bear with me as I proceed to tell you what I've learned over the last four weeks and what I've learned in the Ministry of Health prior to that.

I'd like to talk about our amendments, as was asked, and I'd like to start with the Ministry of Health Act. In that act, we made four amendments to the act. We made the amendments under subsection 8(7), where we wanted the commission to perform assigned duties and exercise assigned powers. Our second amendment to that was under subsection 8(8), a technical amendment to correct a translation error. The third amendment we have is to subsections 8(8.1) and (8.2).

Mr Gerretsen: That's on page 47?

Mrs Johns: I don't know. I haven't got the page in front of me. I'm sorry. I'm not following through in the act. Schedule F I'm talking about at this particular point.

We're amending the commission's four-year term and we're talking about adding additional periodic review. We're looking that a sunset clause be at four years.

The fourth amendment is to clause 12(c.1).

Ms Lankin: Mr Chair, on a point of order: I understand and sympathize with the first time before a committee and the nervousness, genuinely, but the intent of a presentation is not to read the amendments to us. We have them. It's to talk about the reasons these amendments are being brought forward and what has been heard and why. For example, we just skipped over the commission and assigning powers, which is one of the ones I've raised.

Mrs Johns: I'm just telling you what the amendments are now. I can talk about—

The Chair: Basically, the motion reads that the parliamentary assistant will have 30 minutes to present the government's amendments, which I believe is what Mrs Johns is doing.

Ms Lankin: So she's going to read the amendments, and you think this is an appropriate presentation.

Interjection: That's what the motion says.

Ms Lankin: If this is what the government thinks, if you want to play games and think this is appropriate, for a PA to read the amendments and not present the intent of the government, when that's what we have been debating all morning—

The Chair: Mrs Johns has the floor, Ms Lankin.

Ms Lankin: —then you once again are showing that you don't care about the process, you don't care about informing people about the intent of the government and that you can't defend this bill and your amendments. This is a shame. If we sit here and have her simply read the amendments into the record and not give an explanation, this is an absolute sham of a process.

The Chair: Ms Lankin, Mrs Johns has the floor.

Ms Lankin: Absolutely, Mr Chair.

Mrs Johns: The fourth amendment in this section is under clause 12(c.1), the regulations assigning duties and powers to the commission.

As we went through the last three or four weeks, we had a number of people talk to us about the commission and the need for the commission. We had the Ontario Hospital Association come to us and talk about the need to assign a commission to implement the district health council proposals or to implement restructuring of hospitals in Ontario. That's what we're trying in this act to do.

One of the very major recommendations that came out of the last three weeks of hearings from a number of presenters, both hospitals and the OHA, was that we needed to sunset the clauses within this section, that this should not be running forward indefinitely. That is probably our major amendment to this section. We listened to the people and we've sunsetted the clause after four years. We made sure that provision was listened to from the people.

In the other sections, we're clarifying with respect to the commission's power. People have talked about what the commission should be able to do and what it shouldn't be able to do, and we talked about that in subsection 8(7).

The second group of amendments is to the Public Hospitals Act. The first amendment is subsection 6(4.1). It provides that we give 30 days' notice of intention re directions on what we're going to do with the hospitals.

Subsection 6(9) is the repeal of section 6 powers after four years.

The third amendment is to subsections 9(1), (1.1) and (1.2). We gave 40 days' notice re—

Mrs Caplan: Fourteen.

Mrs Johns: What did I say, 40? I'm sorry. As soon as I stop shaking, I'll be okay.

We gave 14 days' notice re implementing hospital supervisors, unless at any time there wasn't a quorum on the hospital board. That's what we did under that section.

1250

In clause 32(1)(d), we've amended the regulations with respect to the hospital bylaws.

In subsection 13(3) of the bill there is a deletion of regulations prescribing additional circumstances where a physician's right to hearings and appeals could be limited.

The next amendment is to subsection 13(3). Where hospitals cease to provide services, boards can take actions re the appointment and privileges with no hearings, appeals or damages. We had references to clause 32(1)(u) and subsection 44(2) of the act.

The last amendment to the Public Hospitals Act was in section 14.

What we're basically doing here is making sure that we are able to implement the district health council reports, that we can work towards restructuring the health care system in Ontario. It has been my firm vision during the period of the hearings that with a restructuring of the hospitals, there will be money available to reallocate into other areas within the community.

We have had the Ontario Nurses' Association, in a written brief, say we have to have money to allocate into long-term care and into other health areas. This is our goal in this section: to make sure we are allowed to implement the hospital restructuring that comes out, which is community-driven, and we can then take the funds available from the restructuring and move them into health care. That plan is win-win for all the people of Ontario.

The third section we have amendments to is the Independent Health Facilities Act. The first section we amended was subsection 18(3), and that was the definition of "maximum allowable consideration," to ensure it covers the transfer of licences and shares.

We also amended subsection 19(2), which deletes the clause we had in the act previously, "or a prescribed person," to address the concerns of the CHA.

Section 25 is a technical amendment. There were two amendments to that section, and there was also one to section 23.

In section 26 we made some deletions. We deleted subsection 11(4.1) of the Independent Health Facilities Act, and it relates to a previous amendment.

In section 30 of the Independent Health Facilities Act, it also was a technical amendment, so I won't go into those.

Subsection 33(3) of the act is a technical amendment.

Section 34 is with respect to personal information and confidentiality. We have talked with the privacy commissioner this morning and I'll go into that as we get through those sections.

Section 35 is an amendment to grant immunity to the college as a corporate body. There's no immunity for inappropriate disclosure. That is something we heard a lot about during the hearings: make sure that a person's personal information was held private and sacred. As many of the people who made presentations during the hearings heard, there was some controversy about this, although it was never the intention of the government—it was never anything we intended to do—to have personal records and information being disclosed throughout the community. What we decided to do was clarify what we had thought was our intent originally, and I think we have pleased the privacy commissioner with what we did.

Mr Gerretsen: That's section 35?

Mrs Johns: Yes, 35.

Section 37: a technical amendment.

Subsection 38(1): an amendment to allow the ministry to put conditions on regulations exempting any health facility or service from the application of the act.

Section 38 is a technical amendment.

Subsection 38(4) is an amendment to allow the ministry to place conditions on regulations for prescribed amounts payable for services rendered in an IHF under

subsection 42(1) of the act and to prescribe amounts payable to nil.

Subsection 38(4.1) is an amendment to allow the ministry to put conditions on regulations exempting any service from the application of the act, and subsection 38(5) is a regulation-making power for personal information.

The last two are subsection 38(6), which deletes subsection 42(5) of the act, and subsection 38(6), which is a technical amendment.

The reason we have independent health facilities is to ensure that we have a quality of care throughout Ontario. These independent health facilities, thanks to the Liberals, as we heard throughout our committee time, have put into place independent health facilities to allow people to ensure that they were getting the same quality of care throughout many organizations. We wanted to broaden that perspective to allow people to know there was a quality of care and that there was due process with these independent health facilities.

This section is here because we wanted to broaden that power. It's also here because we may need this in the district health council restructuring in some areas, and this is an important aspect of us being able to restructure the health care in Ontario and provide great-quality service for the people of Ontario.

The Chair: Thank you, Mrs Johns. We'll recess until 2 o'clock, at which time Mrs Johns will have 18 minutes left.

Mr Phillips: Mr Chair, I'm not clear on who will be talking to what sections of the bill. There are two sections, among others, that I'm very interested in—the arbitration section and the pension section—and I'm just not sure who will be speaking to that.

The Chair: Does anyone have an answer for that?

Mr Clement: According to the motion, it's the parliamentary assistant who has carriage of that particular section of the bill.

Mr Phillips: Who has parliamentary carriage of that section of the bill?

Mr Sampson: I do.

Mr Phillips: Good. The mystery is cleared up.

The Chair: Thank you.

The committee recessed from 1257 to 1400.

The Chair: Welcome back. We will now continue with Ms Johns. She's got 18 minutes basically to go, to finish presenting the amendments. Ms Johns, the floor is yours.

Mrs Johns: Good afternoon. I was in the process of discussing schedule F, the Independent Health Facilities Act. I ran through the amendments to give you an opportunity to see the depth that we were talking about with the amendments.

Basically, in the Independent Health Facilities Act, we're looking for the ability to be able to restructure the hospital sector. We're looking for an overall view to be able to do that.

We're also looking to be able to provide more care in the community with a guaranteed quality assurance. We believe that's very important so that we know the people of Ontario are getting the best quality of health care and the qualities are being maintained at a certain level.

The third thing that we're doing in the Independent Health Facilities Act is that we're introducing an RFP process which will be able to look at certain preferences and to be able to decide on a weighting system that will allow us to get the necessary kind of care that the people in Ontario need in their communities.

The next section is schedule G, and that section relates to the Ontario Drug Benefits Act. We have 11 motions here. The first motion is on section 4. It's a housekeeping motion which clarifies a situation where eligible persons can be charged an additional amount for a prescription. Section 4 prohibits pharmacists from charging eligible persons for no-substitute prescriptions that meet prescription conditions. Subsection 6(6) allows reimbursement by ministers of additional costs of no-sub prescriptions. We then have four amendments on confidentiality as per the discussions earlier that we had about the freedom of information.

We then go to subsection 18(1), where we're talking about the regulation-making authority for no substitution. We have clause 18(1)(g.6), regulation-making authority to limit the supply of prescriptions. We also have an amendment, subsection 18(1), a regulation-making authority for personal information.

Section 23, the College of Pharmacists requested to make usual and customary fees apply to the drug dispensing, and subsection 27(1), the College of Pharmacists requested these two additional statutes.

Basically, what we're doing in this section is we have three motions to address concerns raised during the hearings, changes that will allow us to look at no substitution. We heard a lot of talk about this during the last three weeks of hearings, and we've made some changes by that. Two of the amendments are issues that were addressed by the College of Pharmacists and they meet the needs of the College of Pharmacists discussed.

The next acts, which is schedule H, I want to comment on this, the Health Insurance Act. I want you all to know that this schedule was prepared for the first time in 1972, and as a result of this, many of the needs that were expressed in the Health Insurance Act do not relate to the needs and the issues that are important in 1996. The Ministry of Health decided that it was time to make some amendments to allow this bill to meet the needs of the people of Ontario, and that's what we have done. We have a number of amendments here, and I guess we could run through them.

Section 2(1) is about personal information, as is 2(2). Section 2(3) is again about personal information, as is section 2.1. Sorry, the other two were subsections (1), (2) and (3).

Subsection 3(1) is about the MRC and the expedited process, the Medical Review Committee, how we can move towards allowing the MRC to act quickly in specific needs.

The next section is about the PRC and the same ability to move more quickly within the legislation to deal with situations that need to be taken care of quickly.

Section 9 is the private insurance for costs that are not paid by OHIP.

Section 11 in the bill, or section 17.1 in the act, thresholds for specific services: This allows us to deal

with remaining within the caps and the ability we have to be able to provide services within that cap.

Section 12 of the bill is the general manager payment decisions based on opinions.

Section 13 is the eligible physicians' payment decisions based on opinions.

Section 12 of the bill expedites the MRC-PRC review. Section 12 also relates to the payment of costs where the general manager's decision is upheld. Section 12 is no publication under the expedited review process as a result of a decision being made.

Section 14 talks about who can appeal and the ability to appeal as a result of the expedited process.

Section 21: We have two amendments with respect to personal information.

Section 22: We allow the general manager to determine the address of the physicians. So we're trying to get personal information with respect to the physicians.

Section 23, date changes; section 23, exemption for non-eligible physicians.

Section 29, personal information; section 29, information collected by the RHPA; and section 30, clarifying who is entitled to information about whether a service was rendered.

We also deal in section 31 with the disclosure of personal information, and in section 32 the general manager may request an expedited review process. We've put that amendment in to move the process more quickly.

Section 32: The MRC and the PRC may conduct expedited reviews at the general manager's request. Section 32: We can clarify the applications of medical and therapeutic necessity.

Section 33: We eliminate the ministry inspectors we had put in previously. Because of a number of people who came in during the hearings and talked about the need for them and how many inspectors had been called upon previously, we brought in an amendment to that.

Section 33 changes the reference to inspectors in the MRC and section 33 does it with respect to the PRC. Section 33 is a correction re inspectors' powers. It's a housekeeping amendment. Section 33 is the MRC-PRC inspectors, the powers they have of a commission.

Subsection 34(1) is the regulation-making authority for fees. Subsection 34(2), we delete regulation-making authority, and subsection 34(7), regulation-making authority re limitations on fees.

In this particular section, there are a number of amendments as a result of the way we want to change the Health Insurance Act, mainly due to the age of the bill. We have listened carefully to people as they've come in through the committee process, and we have made some substantial changes as a result of that.

The last section is on the amendments to the Health Care Accessibility Act. This is the last area where we have made some changes. This act was put in effect by the Liberals, and what we have done with the amendments in this act is we have eliminated the ministry inspectors.

So that's what we've been trying to do.

From a global picture, which I think is what everybody was asking me to talk about, and why this government

brought in Bill 26 in the health sections, I want to comment a little bit about that.

There are a number of problems with health care in Ontario that we have heard time and time again from people who have come before the committee, and this government is trying to make some substantial changes to be able to be more responsive to the desires that the people of Ontario have for a continuation of health care into the next millennium.

We have closed 9,700 beds in the last 10 years without a single light switch being turned off or a building being closed down. Areas of health care that need investments—there are lots of them. The long-term care is growing at 13% per year. We have no money to move towards those new areas that need money. We have no ability to be able to meet the needs of the people of Ontario as it is.

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We are providing in this act the ability, the tools that are necessary to make the locally planned improvements to the hospital system that will allow it to operate more effectively, more efficiently and will allow us to make better use of the scarce resources we have, which are dollars. We need to reinvest, we have to reinvest, and that's the purpose of why we have part of this bill, schedule F.

With respect to the independent health facilities, why did we touch this bill? What was the reason for us doing this?

We have independent health facilities at this time that provide a wide variety of services. Many of them offer services that are not provided by OHIP, and there needs to be a greater quality control on all of these different facilities that offer these services. We are increasing the government's ability to make sure that general health restructuring takes into account the role of the independent health facility and the relationship it will play to restructuring and community needs in the future.

The opposition has been criticizing the government for opening up a possible two-tiered system. We do not believe that. We believe it is far from that. What we are saying is that we're increasing the quality control that will help protect the citizens and the people of Ontario.

Why did we touch the Ontario drug benefit plan, schedule G? When the Ontario drug benefit program was brought in in 1974, the actuaries assessed the government's and said that the program would never grow above \$100 million. Twenty years later, we have a program that costs approximately \$1.3 billion and it's still growing. It's tripled in the last 10 years.

We have decided that in order to continue to afford the Ontario drug benefit program, and to extend benefits to 140,000 working-class poor in Ontario, we had to make some decisive decisions. We had to decide how best to reallocate the money within the program so as to be able to meet the needs. We're asking people for a small contribution to be able to help the working-class poor of Ontario.

Changes will also allow the ministry to add some of the new and very expensive drugs that are on the market on to the ODB formulary. We heard a lot from the AIDS people about this and how we had to be able to be

receptive to be able to get new drugs on, because that was their lifeblood. So that's one of the things we're doing with respect to ODB.

The option that previous governments have used is that they've delisted drugs or taken them off the ODB formulary. I believe during the last two governments there were—I'm going to quote—maybe about 120 drugs that were taken off the formulary. Our government does not want to do this because some of those drugs are very important to people and they need those drugs to continue on. What we're looking for is a better way to provide drug benefits and drugs to the people of Ontario.

Under the Health Insurance Act, the ministry has knowledge of fraud, misuse and abuse of the health care system by consumers and by providers alike but very little ability to be able to combat the problem of these issues. We have given the government the ability to bring accountability to the use of taxpayer dollars in our health care system. I think we all know that there are enough dollars in health care at this point if they were allocated properly within the health care system. The people of Ontario can't afford to have one dollar that isn't going to the use of drugs and to their ability to best allocate the money down to them. That's the important thing. We're trying to get money down to the people who need it most, the people of Ontario, not tie it up in administration, not tie it up in programs that aren't working. We have given the government the ability to bring accountability to the use of taxpayers' dollars on health care.

One example of a provision that caused great concern was the introduction of the Ministry of Health inspectors. The Ontario Medical Association and the College of Physicians and Surgeons came to the ministry and said: "We can help you achieve the directives you want to have without you imposing inspectors. How about an expedited MRC process that will allow things to move more quickly, that will allow us to ensure that our system is being used effectively?"

The government listened, and that is why you're seeing a number of the amendments we've put in the bill. We made the necessary changes that will speed up and allow the Medical Review Committee process that will allow the government to deal with many of the problems that arise on a timely basis and will allow ourselves to be able to deal with them in a very efficient manner.

Mr Gerretsen: Now which amendment is this that you're speaking to?

Mrs Johns: We're now speaking to the Health Insurance Act, H.

Mr Gerretsen: No specific amendment?

Mrs Johns: No, I'm just talking. We're looking for a global perspective here.

Mr Gerretsen: I see.

Mrs Johns: Other changes in the Health Insurance Act allow government to manage the schedule of benefits, which governs how physicians have been paid in the past. In 1991, the NDP government gave up this ability, and as a result, some specialists and groups of physicians have said to the Ministry of Health that their services haven't been increased for many years. We see that problem when we talk about the delivery of babies in Ontario and how much money it costs them. We heard that numerous

times as we went through the consultation process. We're taking over the schedule of benefits so that we can actually look at how physicians are being paid for certain services. Until Bill 26, the government has been able to help these physicians and therefore to help the people of Ontario.

While Bill 26 has been painted as a draconian, power-grabbing, undemocratic bill, I suggest—

Mr Gerretsen: I agree; I agree. Do you agree?

Mr Curling: I'll vote for that.

Mrs Johns: It's my turn.

I suggest that this is just not so. When we take away the fearmongering and all of the discussions that have gone on from the opposition, what we find in Bill 26 is a blueprint for health care reform in Ontario.

Mrs Caplan: Oh, please.

The Chair: That concludes your time, Mrs Johns. We now have 15 minutes per opposition party left for questions, beginning with the official opposition.

Mrs Papatello: Helen, before we broke before lunch, you mentioned—and I was very careful to listen to how you framed this—you said it was the intent of your government that you had to redefine how moneys were spent within a community for health care, and it was your intent that moneys will be reallocated within the community. You having said that a couple of hours ago is in direct opposition to what the Minister of Health is on record as having stated, that the moneys in fact will not necessarily be going back to that community where the moneys are found in savings because of restructuring.

To most communities across Ontario, which are intent on restructuring anyway and will now be forced to do that rather quickly, this is a critical point and I need you to clarify, because we're getting two sides of this and communities need to know. When savings are being found within the community, is the money then staying within the community, as you said before lunch, or is it not staying within the community, as the Minister of Health is on record as saying?

Mrs Johns: What is happening with the reallocation of dollars is we're looking at specific projects and where we will invest money back. For example, this government has already reallocated money back into measles immunization. They've allocated money back into some long-term-care areas. We have allocated money back into dialysis.

What I'm saying to you is that we are looking for reallocation dollars. We will find the savings first, and we will reallocate them back into the communities.

Now, it won't go—so what will happen is it will not go back—

Mrs Papatello: So is that "communities" then?

Mrs Johns: "Communities." It will not be a saving in Windsor will go back to Windsor necessarily. It will go back to where the consumer need for the health service is.

Mrs Papatello: Just for clarity then, those communities that find the millions of dollars of savings will not realize those same millions of dollars of savings within their community in health. Yes or no?

Mrs Johns: I think the issue that would be stated with that is that communities will have the health care they

need and deserve, that every community will have the ability to have allocations as we make them on a need basis. For example, in your community if you don't need more dollars in long-term care and someone else does, we may well put them into an area where there are needs as opposed to just saying, "It came out of this area, it came into this."

The problem with what you're saying, Mrs Papatello, is this, that we have some really very big growth areas in Ontario that do not have the same level of funding as other places.

Mr Cooke: All of Windsor's money is coming to the 905.

Mrs Johns: So in some areas we are reallocating the money. We're finding the savings. We're reallocating them back into the area where there is the need for it and where the service needs to be augmented.

Mrs Papatello: I do have some trouble with that because this government is going back and forth on that. I think groups that are out there trying to restructure should know clearly that the carrot that was there with the previous government, something that did convince them to work cooperatively together, is gone. Any savings you find will be sucked out of that economy and likely go somewhere else, and I would submit that the government needs to find ways to act as incentive for these kinds of programs.

Mrs Johns: Can I just add to that before you change that?

Mrs Papatello: Another point you made earlier was that you were listening to the Ontario pharmacy association and in response to what they were offering, you have come forward with amendments. I'm going back to a certain page in Hansard from the Ontario pharmacy association when they were here to speak to you. What they say is that they are "shocked and dismayed" that they have not been consulted, they have not been listened to and the only thing they are pleased with is that they finally got an opportunity to have hearings. I'm just curious to know what it is you're responding to because their organization is not pleased with you at all.

Mrs Johns: With respect to the first question that you had, Windsor does benefit by the reallocations we have made in the system. For example, we are immunizing your children from measles also, so we have reallocated money back. We are looking at dialysis machines throughout all of Ontario, so there is a reallocation back to a number of areas within Ontario. Where does the money come for those programs if we're not reallocating back to your community?

Mrs Papatello: Are you asking me?

Mrs Johns: I'm saying it is—

Mrs Papatello: I'd be happy to take some time to answer questions, Chair. I don't know that that's appropriate for this committee. I'm looking for the answers from you, frankly.

Mrs Johns: Then that is the answer from me.

Mrs Papatello: So far you're telling the people of Ontario then that the money is not going back to their community. I wish you'd just say it like it is because people in Ontario are not interested in a paragraph answer when the reality is that the money's not there, that we

already have people on waiting lists for dialysis despite programs being announced. In Windsor there are lineups. So what you're saying and what is actually happening are two different things. I'll defer to my colleague, Gerry.

Mrs Johns: With respect to the second question that you asked, the pharmacy college asked for the amendments that we've put through, not the association. That's the answer to the second one.

Mr Phillips: I was one of the members who was not on the health sector, so I just want to make sure I understand that you're implementing what I think.

You remember in the Common Sense Revolution you said:

"For some time now, there has been growing debate over the most effective way to ensure more responsible use of our universal health care system. In the last decade, user fees and copayments have kept rising and many health care services have been 'delisted' and are no longer covered by OHIP."

You went on to say:

"We looked at those kinds of options," namely, copayments and user fees and delisting services, "but decided the most effective and fair method was to give the public and health professionals alike a true and full accounting of the costs of health care, and ask individuals to pay a fair share of those costs, based on income. We believe the new fair share health care levy, based on the ability to pay, meets the test of fairness and the requirements of the Canada Health Act while protecting the fundamental integrity of our health care system."

"Under this plan, there will be no new user fees."

My question is this: Do the amendments in your plan have the fair share health care levy in there and does this plan prohibit, as you committed to, any new copayments, new user fees or delisting services? Can you assure us that under your plan there will be no user fees? Is that all part of your plan here in the amendments and in the bill you proposed as kind of the cornerstone, I think, of this document?

Mrs Johns: I forget the first part of the question. I'm sorry. The second part was about no new user fees. The first part was about, oh, the fair share health tax levy.

Mr Phillips: Just that I assume that the reason for the health amendments was to implement your promises, and here you said that you looked at the possibility of copayments, delisting services, user fees, but you rejected all of those because you had a better plan, and during the election that was the fair share health care levy. I just want to be assured, because I wasn't in the health section, that there's nothing in this bill that permits new user fees, new copayments or delists services, and that the part of this plan is for your fair share health care levy.

Mrs Johns: First of all, with respect to the fair share health care levy, this is not discussed in Bill 26. The fair share health care levy is an issue that will be raised with the first budget and economic statement, the budget statement that we have.

Mr Phillips: So it just prohibits copayments then, I guess.

Mrs Johns: So that is not there at this particular point. The second part, user fees as copayments: User fees are on those services that are covered by the Canada

Health Act. These copayments that we have put in with respect to drugs are not user fees. We believe that.

Mr Cooke: Even your cabinet revised that.

Mrs Johns: And from that standpoint, what we are saying is that the copayments that people are making in Ontario for drugs will allow 140,000 new people, working-class poor, to have the ability to have a drug plan. This is a system that has never been before. These people work mostly for minimum wage, and a health disaster could wipe them out in a moment, so this is a system that's good for Ontario, and in my riding I can say that I haven't very many people calling to complain about this. The seniors of Ontario believe that they should be helping their fellow mankind.

Mr Phillips: I appreciate that. It's just that you have gone against what you said you were going to do. That's all I wanted to know, that you've decided that what you said there you've changed, and this bill changes it. That's all I wanted to know. You said you wouldn't have copayments.

Mrs Johns: I don't agree with that.

Mr Phillips: I realize that you may not, but that's what you just said.

Mrs Caplan: I have a number of questions, unless any of my colleagues want to go first.

Mr Gerretsen: Go right ahead.

Mrs Caplan: The first question I would have for you is, do you agree that Bill 26 has very significant health policy implications?

Mrs Johns: Yes.

Mrs Caplan: You're also saying that your amendments respond to what you've heard from presentations at committee. Is that correct?

Mrs Johns: In some instances, yes.

Mrs Caplan: Just about every presentation before this committee said that the minister should not have the ability to delegate his authority to the restructuring commission, and yet you've brought in an amendment which allows him to delegate more and is more specific about the authority to delegate.

How can anybody believe that you've listened to anything you've heard when your very first amendment doesn't respond to the wishes of the Ontario Hospital Association, the doctors, the insurance companies? Everyone who came forward said the minister should not delegate his authority, he should make the decision and then allow a commission to implement, but he must be responsible. They said he must not have the ability to delegate his powers. How do you justify that?

Mrs Johns: What I heard said over the course of the last three weeks was that there had to be a restructuring commission. There had to be somebody to implement the communities' plans and what they feel is best for their health care in their communities.

What we heard was that there had to be a commission that would allow the implementation of this process to happen. For example, the Ontario Hospital Association suggested that, the district health council that came in suggested that. There had to be some body to be able to allocate and to implement the plans within each area that needed to be done.

We believe we have met those needs by setting the commission and giving them the responsibilities to be able to amalgamate, to merge, to be able to meet the needs of the community, and we believe we've fulfilled their objectives in that area.

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Mrs Caplan: Then you haven't heard a word that anyone has been saying to you. Even those who came in and said, "Yes, you should have a restructuring commission to implement plans," each and every one of them said, "but the minister should not be able to delegate powers." My question to you is, if you really want to listen, if you really have heard, will you bring in an amendment or will you pass our amendment which will allow a restructuring commission to implement but will ensure that it is the minister who approves those plans? Will you commit today that you will not delegate powers, as every one of the presenters asked you. They said: "Do not allow the minister to delegate his powers. He must be accountable."

Mrs Johns: As a result of the NDP's implementation of the district health councils, there are 60 reports that are coming to us in the next period of time. We want to act quickly to implement health restructuring and hospital restructuring in Ontario and we need to have an ability to react quickly to these reports and to be able to implement visions to be able to have the hospitals restructured. We believe that the best way to do that is to have a commission that deals with every one of those reports, finds similarities and differences and can use that knowledge to be able to move on to the next restructuring. We believe a commission is an absolutely imperative issue.

Mrs Caplan: I'm not arguing with you about having a commission to implement a plan where there has been process in a community and consensus developed in a community. What I'm arguing, as well as every presenter before the committee, is that that commission shouldn't have the powers of a minister. That's the only thing that everyone has said consistently. There are some people who didn't like a commission at all, but those who did like the idea of a commission felt the minister should make the decision and then the commission implement. Why haven't you listened to all of those organizations and individuals and presenters who said yes to a commission to implement, but the commission should not have the powers of a minister?

Mrs Johns: We believe we have listened in the fact that we've said the commission must be accountable to the minister and that at any time the minister can go back and ask the commission to be accountable for its actions. We believe we are doing that.

Mrs Caplan: The next thing that people objected to with your commission was the fact that there was no process. While it is true that your legislation doesn't change the advisory nature of a district health council, nor does it require any process or community participation whatever, why haven't you listened to each and every one of those presenters who came forward and said, "Make sure that you build in a requirement for community participation so that people can be heard, so that there will be what's called due process"?

The Chair: Thank you, Ms Caplan. The 15 minutes is up. Third party.

Ms Lankin: The issue with respect to the health restructuring commission and the assignment of powers I think, Ms Johns, you haven't answered, and I think the amendments you have put forward in fact do not accomplish what we heard from virtually every group that was in support of the health restructuring commission. So I hope that's an amendment you will revisit as we go through the clause-by-clause.

Following up on Mrs Caplan's question, you said in your overall presentation that these actions would be community-driven, and I think you've said a number of times during the public hearings that your government intends to respect the work of local district health councils in the local planning. It was pointed out on a number of occasions that while the legislation requires the health restructuring commission to be set up and while it continues to require the work of district health councils, there was no linkage between the two, and you've said on a number of occasions that it's your intent as a government to have those two things linked.

I'm wondering why you didn't bring forward an amendment to address that point and, secondly, will you support our amendment which in fact makes that linkage?

Mrs Johns: This is an issue that we have heard from a number of different people, and I'm sure, because I know how thorough you are, that you've read the ONA report too, where they talk about linkages and how in some cases the district health council looks at specific issues and doesn't take into account the global perspective of health care in a community. When it started out, the district health council only looked at hospitals as opposed to health care. One of the criticisms they had is that we have to look at long-term care, we have to look at a number of different issues when we're assessing the needs of the community, because right now, quite frankly, what happens is that the hospital structuring comes in, closes a hospital or closes a bed, and all the savings are deferred.

Ms Lankin: Ms Johns, I want to actually bring you back to the question, I'm sorry to do this. I think that the points that you make are all valid points—

Mrs Johns: Yes, so can I just refer to that?

Ms Lankin:—and the commission has the ability to implement what it sees fit on to your legislation and I'm not asking for some binding. I'm saying, having regard to those reports, this is what you committed to us over and over again during the hearings. I'm just wondering, will you support an amendment that actually makes that linkage that the commission has to look at and have regard to DHC reports?

Mrs Johns: From that perspective, there may be a case where a district health council has not looked at all aspects within the community—

Ms Lankin: Granted.

Mrs Johns:—and we may have to in some ways—

Ms Lankin: Augment the process.

Mrs Johns:—be prepared for that situation or augment the process.

Ms Lankin: Right.

Mrs Johns: So we have decided that the terms of reference with respect to this can include process or we can talk about the different issues so that we will be able to change them in different situations. So we believe that the linkage shouldn't necessarily be through legislation, that there should be an adaptable process to be able to meet the needs of the community.

Ms Lankin: Thank you. So what you told us day after day during public hearings is in fact not what you're prepared to support in legislation.

Let me ask you about your comments in terms of reinvestment of the dollars saved into the overall health care pot. Nothing in this legislation guarantees that and I think you would acknowledge it's one of the very sensitive points that people are very concerned about. There is an amendment that has been proposed by our caucus which would see the moneys saved earmarked for reinvestment in the health care sector and it's an amendment I'd like to know whether you would support and whether you would ask the minister if he would support, and perhaps he might even sponsor it, given his commitments to the reinvestment of those dollars.

Mrs Johns: The party has stated—

Ms Lankin: I know that. Would you support that kind of an amendment?

Mrs Johns:—that we will have \$17.4 billion in health care at the end of our mandate and what that means is that money will be in the health care system in the same amount as is in today.

Ms Lankin: Would you support that in an amendment to the legislation?

Mrs Johns: We feel that that's a strong enough statement that we don't need to—

Ms Lankin: Don't need to put it in the legislation.

Mrs Johns:—that's what we will be dealing with.

Ms Lankin: "Trust me."

Mrs Johns: I think the voters will be judging us on those grounds, if we have the money maintained in health care or not.

Ms Lankin: "Trust me." That's what it boils down to.

Could I ask you, with respect to the Ontario Drug Benefit Act, there were some very specific and I think important concerns raised by a number of groups around copayments and I heard you say a little bit earlier that seniors support this. That's not quite what we heard from the seniors who came forward, but let me ask you about an even more particular group. Those patients who are suffering from mental health illnesses or psychiatric illnesses, we heard very, very damaging predictions about what the copayment would mean to that patient population. Could you tell me why you haven't listened to that and why you haven't built something in that would protect that very vulnerable group?

Mrs Johns: We have heard that. There are a number of people who will be impacted as a result of the number of prescriptions they take in a time frame and we intend to look at that through the regulations to make sure that people aren't unduly penalized as a result of a serious number of prescriptions that people like the mental health may well have.

Ms Lankin: So are you giving us a commitment that the regulations will actually set out classes of people to

whom the legislation will now not apply in terms of copayments?

Interjection.

Mrs Johns: No one's giving me a clue.

Ms Lankin: Okay.

Mrs Johns: Don't know.

Ms Lankin: Don't know. "Trust me"; that's number two.

In terms of schedule H and the Health Insurance Act, section 12, sections 18(2) and (3), the consulting by the general manager of OHIP with a physician—I think you know the section—could you tell me why you think it is appropriate for the general manager of OHIP to consult with a physician about whether or not a chiropractor's billings are in fact therapeutically necessary?

1440

Mrs Johns: I think this is one of the excellent points that you've brought up on our three-week road trip. I agree with you that what we have said, in effect, is that for doctors there will be a practitioner who is able to evaluate that. At the Ministry of Health, at this point, there is no chiropractor or person who is employed by the Ministry of Health, so they have used a medical practitioner in that area. What the intent is of the Ministry of Health, and has always been the intent—

Ms Lankin: Are you going to amend this? Are you going to amend your amendment?

Interjection.

Mrs Johns: We're waiting to see your amendment.

Ms Lankin: No, I'm sorry. This is an amendment you dropped on us on Friday morning, after days and weeks of you being able to prepare your amendments. It went through you, it went through the other two PAs who are on this committee, it went through the Minister of Health, it went through his staff, it went through legal counsel. Nobody noticed it. It took me five minutes to find it. It's not up to me, Ms Johns, to correct your mistakes.

Mrs Johns: I appreciate that. Thank you very much.

Ms Lankin: Are you going to amend this?

Mrs Johns: We have a draft of one and we would like to submit it for your approval first. Have a look at it and see what you think of it, and we would be happy to do that.

Mr Cooke: Why didn't you give the original amendments to her?

Mrs Johns: The original amendment deals with this. I want to say that it was never the intention of the Ministry of Health to say, "We'll always use a doctor to establish chiropractic or any other needs."

Ms Lankin: But you agree that that's what your amendment would—

Mrs Johns: That's the way the reading goes, and we're certainly happy to clarify that.

Ms Lankin: Can you tell me why the Minister of Health, sitting in his office reviewing that, would have approved that amendment to be tabled before this committee?

Mrs Johns: It's the current practice.

Ms Lankin: It is not the current practice for a physician to review chiropractic billings.

Mrs Johns: Well, the ministry people here are saying it is. Mary Catherine, would you like to talk to that issue?

Ms Lankin: At this point in time, I will move on, but you'd be interested to speak to the chiropractors about that and their understanding of the process and their involvement in that process. They would disagree with what you have just said. But I understand that was provided to you by counsel and officials sitting with you.

Let me ask you about independent health facilities. You said that your intent was, through DHC restructuring reports and hospital restructuring, that more services would be provided through independent health facilities. We heard over and over again that people felt there needed to be a public process about those services that you would designate to be provided through an independent health facility.

Mrs Johns: I missed it. I'm sorry, there's too much noise.

Ms Lankin: With your amendments, you did not address that fact. There is no public process around the designation of services and/or clinics and/or operations to be designated under an independent health facility. I'm wondering why you haven't amended it to deal with that very real concern that I think people have that you are going to move things out of the hospital sector and/or bring in occupations and groups and services that have never been covered under the act, without due process or without public process.

Mrs Johns: With the independent health facilities, we believe that with the restructuring, we need to be able to allocate some areas to independent health facilities. So that's what we're trying to do and we believe we have to have the ability to do that. I don't think that was your question.

Ms Lankin: No.

Mrs Johns: You're asking me about the due process. I'm sorry, it was really noisy. I apologize. There was talking here going on. Can you just—

Ms Lankin: Very specifically, there were groups who are currently providing services outside of a hospital who indicated a concern that they may be swept under the auspices of the Independent Health Facilities Act without any due process. The designation does not set out a process for informing people, and quite frankly, the powers with respect to revocation of licences and others—I'll keep talking while you read that or—

Mrs Johns: No, I'm going to read it to you.

Ms Lankin: Okay, go ahead.

Mrs Johns: "Public hearings and 30-day notice provisions may delay the intent of the amendments to permit flexibility and quick response that may be recommended by the restructuring commission. Where recommendations for designations arise through restructuring initiatives, consultation through the process would have already occurred. In other instances such as designations to move a private hospital within the scope of an IHF, a consultative process may not be necessary." It may be that they're doing those services at this particular time.

Ms Lankin: So in fact, although that concern was made by many groups, made very clear, it's a concern that you've not listened to. Essentially, you're saying to people again, "Trust us."

Mrs Johns: The Ministry of Health doesn't believe that that is necessary or a safeguard that needs to be there.

Ms Lankin: I guess if you want to have all the power to make all the decisions and to act as quickly as you want and not have any respect for a public process or due process, sure, I can understand the ministry taking that position. That's not the position you, as an elected official who's elected the responsibility to guard public interest and public process, I think, should be taking, but there we have it. It's another "Trust me."

With respect to the Public Hospitals Act, section 14, subsection 44(1.1), where you have narrowed the application of the minister's ability to give powers to CEOs to revoke hospital privileges of physicians without due process to a situation where the hospital ceases to provide services, either at the decision of the CEO or by the direction of the minister: Can I ask you in that situation why you wouldn't provide either due process for physicians in that situation because there where a service is ceasing to be provided, it more than likely will be relocated, say in a merger or in the rationalization of services, to another hospital and there is no ability for a physician to argue that he should be able to follow his patients or his clientele to that?

Secondly, what we heard you argue was that where there were quality concerns or due concerns about the physician, why would you not protect the existing process for physicians in this circumstance?

Mrs Johns: With respect to the doctor and what will happen is that in some cases specific wings in a hospital will be closed down because the restructuring will suggest that we move them to another area to consolidate or the closure of a hospital, we have said that the doctor's privileges will not follow. Basically what we're saying is that the doctor's not employed by the hospital. He's a self-employed individual. He has the ability to apply for privileges at another hospital that will give him all of the benefits that come with the privileges of another hospital.

Ms Lankin: But you've taken away the appeal process if that is rejected. That's the concern. If you rationalize services and move nephrology, was an example that we heard, to another hospital and the individual doctor has been a very strong advocate on behalf of that hospital budget area in that centre and has been a thorn in the side of the hospital CEO community and they know it and privileges are denied, there's no process for appeal for that doctor. Why would you do that?

I understand the need for restructuring and being able to. In a situation of closure it's fairly obvious, but where services are being moved, why would you not leave the right of appeal and due process for the physician and those physicians' patients to have the physician go with them to where the services will be provided?

Mrs Johns: If the hospital is no longer providing services, for example, they're not in the OB area any more, there's no need for the services from that doctor if he's a doctor who delivers babies.

Ms Lankin: Ms Johns, where you're rationalizing services, what's happening in many of these restructurings is services are being relocated into one hospital instead of being provided in two or three different hospitals.

Mrs Johns: Yes.

Ms Lankin: In that circumstance, the hospital that is actually ceasing to provide the service can revoke the privileges.

Mrs Johns: Yes.

Ms Lankin: But you've also not provided an opportunity, if the other hospital doesn't grant the application for privileges, for the appropriate appeal.

Mrs Johns: That's true. I agree with you that's true. The doctor then has to go and apply to the other hospital for an ability to work in the hospital, for privileges.

Ms Lankin: Okay.

The Chair: Thank you, Ms Lankin. Thank you, Mrs Johns.

Ms Lankin: There's much more I would like to be able to ask the honourable parliamentary assistant. I'm sure you're aware of that, Mr Chair.

Mrs Johns: I'd like to thank you for your time and your questions.

The Chair: Who's next? Mr Sampson.

Mr Sampson: Thank you, Mr Chairman. I'm here to speak to—

Mr Curling: Everything.

Mr Sampson: —just about everything else, with the exception of—

Mrs Pupatello: Schedule Q.

1450

Mr Sampson: No. We'll deal with schedule Q. I'll be speaking to everything but schedule M.

Let me just start off by indicating to the committee that the sections I'm dealing with are part of, obviously, this particular piece of legislation and certainly part of the overall theme and intent of the legislation, which is to follow through with our election commitment to streamline government, to reduce its cost and to deliver to the electorate of this province on our commitment to change the way in which we're governed in this province.

Our first priority, and it's part of this bill, is to get Ontario out of the burden of the rising debt. We clearly must deal with the fact that there are a number of things which this government is currently doing, instituted by previous governments, that we shouldn't be doing any more. It's important to focus on what government does best and do that better; and what government is not very good at, rationalize it, reduce it or eliminate it. That's what business has been doing for years. That's how business survives a down cycle. They don't survive a down cycle by continuing to go to the banker and saying, "Please, more money, sir or ma'am." They survive a down cycle by focusing on what they do well, doing it better and ceasing what they don't do well.

We in this province have \$100 billion in debt. We must figure out ways so that we can pay the interest on that first, and then, through the restructuring and realignment of government, identify how it is we can start to pay that back. Clearly, if we don't deal with the spiralling debt and deficit problem, there are fundamental things which this government is currently doing that we just simply will no longer be able to do—period, full stop, that's it. It is not appropriate for the government of this province to go back to its electorate and say: "I'm sorry, I can no longer afford education. I'm sorry, I can no longer afford certain aspects of health care." We must

restructure what we're doing. Bill 26 is part of that restructuring process.

Mr Gerretsen: So you're announcing the tax cut then? Is that correct?

Mr Sampson: One of the ways in which we intend to deliver on the restructuring process is to deal with our transfer partners fairly and effectively, providing them, as we've called it, the tools to be able to manage their affairs like we want to manage ours. It's inappropriate for us to deal with getting our house in order, but can you continue to have the handcuffs on our transfer partners as they deal with their economic reality, their commitment to their electorate and, frankly, their ability to raise funds to pay for what it is they're doing? This bill allows the flexibility so that we in the provincial level and our transfer partners can get on with the job of governing effectively, efficiently and with a purpose.

Our government is committed to the objective of delivering on job growth and job opportunities. We heard, as we travelled throughout the province, as it relates certainly to the Mining Act amendments, from mining companies and prospectors, small and large prospectors who believed what we were doing in the Mining Act amendments was providing them the opportunity to stay in the province and also to actively develop the rich resources that this province has. So that's part of the reasons why the Mining Act amendments are in this particular bill. It's part of our job strategy. It's part of our strategy in dealing with government size and bureaucracy, but it's also part of our job strategy.

I'm going to go through a schedule-by-schedule review of the particular bill and the aspects that I intend to speak to. But let me start off with commenting about the public sector salary disclosure act.

What we have in that particular act is an attempt to force people who are earning a salary, indirectly or directly via the public purse, to disclose that salary just like public corporations must now disclose the salary and benefits of certain senior executives. There's nothing unusual about this.

Mr Cooke: We all agree with it.

Mr Gerretsen: Nobody said there was.

Mr Sampson: Frankly, you're right, Mr Cooke. Nobody has spent a lot of time on this one. There are in fact, as we would suggest, no particular amendments to this act.

Schedule B, amendments to the Corporations Tax Act: What is that particular amendment? I put it to you that it's dealing with the business of governing that the previous government was not prepared to deal with in its term of office. It's dealing with proposals that were put to the people of Ontario in a budget over two years ago where the NDP government said: "Here's what we intend to do with respect to corporation tax issues. Trust me. We'll put it into legislation." Here we are now over two years later and "trust me" never happened.

People, corporations have been paying taxes—I want it clear—on the basis of law that the previous government never put in place for well over two years. We're prepared to put it into place.

Mr Cooke: And we're grateful for that.

Mr Sampson: I want to also point out that throughout the hearings we heard from members from the NDP that one of the solutions to the current economic situation we're in now is to tax the rich and to tax corporations. This particular amendment, this schedule takes the tax for corporations down, not up. Where were they two years ago with this view that the way out of the debt problem was to increase taxes to corporations? Where were they? It's typical doublespeak from the NDP.

As I said earlier this morning, sometimes I just get dizzy trying to follow the logic and trying to establish some level of consistency between the various parties' views from time to time, minute to minute, day to day, year to year. So we're prepared to implement what our friends on the other side deemed was so crucial two years ago and now they believe they would like to have unwound. I notice none of the members of the NDP would own up to this particular section of the act during the public hearings. Certainly, when comments were made by deputants that the solution to our economic problems was to increase taxes, I noticed they weren't prepared to pipe up and say, "Well, we thought opposite two years ago."

Mr Cooke: Hey, look, we're in third place. Why are you attacking us?

Mr Gerretsen: We won't count this against you.
1500

Mr Sampson: There'll be two technical amendments to that particular act that deal with issues that could have created a double taxation point that was a very complicated piece of legislation. I'll have you know, by the way, that that particular schedule, when you take out the French and the English version, is 11 pages thick or deep or however you want to call that, and that puts it the fourth-largest section in this bill, highly complex but the fourth-largest section of this bill.

The Ontario Loan Act, 1995: Well, we are all well aware of the financial situation that this province is in. Unfortunately, contrary to some of the deputants who came in front of us who said we should renege on our debt, that we shouldn't borrow the money—

Mr Gerretsen: No, no, they said renege on your income tax cut.

Mr Sampson: —we have to borrow the money. I will note to you also that many deputants said to us, "Why are you borrowing money offshore?" Again, I'm sorry if I'm beating up on the third party today, but the opposition will get its time. It's the third party, the NDP, that instituted that program a number of years ago—borrowing money via the Eurobond market from, yes, offshore, paying, foreign currency debt, exposing this province to significant foreign currency risk and exposure simply—why?—because North America said: "I've had it. There's no more money for you, Mr Ontario. The pot is empty." Why? Because the biggest provider of capital to this province in the past, public pension funds, said: "I've had it. No more money for you. I'm overexposed to the province. You've cut the value of my portfolio significantly because of three credit downgrades. This is it. It's over."

So we had to go to the Euromarket, we had to go to the foreign market and we had to expose ourselves to significant foreign exchange risk. This is the legacy that

was left to us by the previous government. Unfortunately, we're going to have to borrow. Schedule D outlines how that is done. No comment through the hearing on that.

Schedule E relates to amendments to the Capital Investment Plan Act. Here we have yet another piece of legislation that we are having to enact to establish in law a policy and a priority, I think at that time, and an initiative established by the NDP government, a private-public sponsorship of a highway. Great idea, but did they have the fortitude to bring legislation to the table? No. Why? I frankly have no idea. I have a hard time understanding why anybody on that side of the table does anything, but I have no idea why they wouldn't bring it to the table. A fundamental policy, their first foray into public-private partnership and they weren't prepared to legalize it.

Mr Cooke: That's because you were filibustering everything in the House.

Mr Sampson: So we're going to have to do it. Well, the comment was that we were filibustering. The honourable member knows that the House sat in 1995 for a little over three months, all of them during our term of office. They refused to bring the House back, in fact, after the winter recess. I think the results of the June 8 election might give us some indication as to why they did that.

Mr Cooke: I'm sure we lost the election because we didn't sit in the spring of 1995.

Mr Sampson: You might have lost even more.

Schedule J, pay equity amendments: This particular section of the act is attempting to bring pay equity back to its fundamental basis. We have heard concerns about that throughout the province, yes; that's quite true, but most of those concerns have focused on whether or not the base pay for certain jobs is appropriate, not whether the comparison to male jobs is appropriate but whether the base pay—I think most of the discussion centred on pay for day care workers—is appropriate. We've attempted to bring pay equity back to its fundamental basis and move on from there.

Schedule K, amendments to the freedom of information and privacy act and the municipal—

Mr Silipo: That's it?

Mr Gerretsen: That's all you're going to say about pay equity?

Mr Sampson: Mr Chairman, if the members here would like to take the floor, they're more than welcome to table this bill.

The Chair: This is Mr Sampson's half-hour. You do have your time coming up.

Mr Gerretsen: I thought he was going to talk about the amendments.

Mr Silipo: I thought there'd be some explanations first.

Mr Sampson: Schedule K deals with the privacy act. We at this point in time are proposing no amendments to that particular act. That schedule deals with and is part of our attempt to try to relieve the administrative burden of various agencies and various bodies having to respond to the privacy act requirements.

We are proposing no amendments, as I said, but we believe this schedule deals with the requests for information under that act fairly and appropriately. We have

heard some discussion that the way to do that is to receive the request, have all the work done to prepare the information, and after that, as a result of a series of hearings and appeals etc, then determine whether it's fair. Well, that doesn't solve the cost problem associated with frivolous requests. It doesn't come anywhere near to doing that. In fact, it adds to it.

Schedule L, amendments to the Public Service Pension Act: I think it's important for the committee to understand that when amendments to the Pension Benefits Act were brought to the House in 1987, the other side of the floor here didn't raise one question about this section of the Pension Benefits Act amendment—not one. It didn't come up in committee, it didn't come up in the House in the debates, but now they're terribly concerned about it. Where were they in 1987? What has changed between now and 1987? Not one concern.

The other thing that I think is important for this committee to understand is that the payments that would be required, in the absence of this schedule, to be paid to the employees pursuant to the windup provision are not funds that have been paid into the pension fund by the employee; they've been paid in by the employer. There's absolutely no payment that an employee has paid that will be reduced as a result of this schedule.

Mr Gerretsen: That won't solve the workers' debt.

Mr Sampson: That is the fact, Mr Gerretsen.

Mr Gerretsen: That's even worse.

Mr Cooke: It's deferred wages.

Mr Sampson: It's not deferred wages; the members on the other side know full well it's not deferred wages. The purpose of this particular section of the schedule is to deal with Pension Benefits Act amendments. They were all-encompassing in 1987, by the way, and were prompted by issues relating to surpluses and how pension surpluses were to be dealt with. As a concession to deal with pension surpluses, this particular component was slipped in to protect the integrity of the fund. I put it to the members of the public who came before the committee and I put it to this committee and I'll do that again and again, I suspect, that the integrity of this fund is not jeopardized by a substantial layoff. The province owes the money under the fund. The province is everybody. "Is the province going out of business?" I kept asking the public. No.

Schedule O, the Mining Act amendments: This schedule is dealing with at least two issues that we believe are part of our plan to reschedule and restructure and create jobs. The first is dealing with the reality that mine development is not a stagnant issue. Environmental issues change day to day, year to year, as governments and Ontarians get more, or less, environmentally concerned. Mines are developed or not developed based upon certain commodity prices, so it's very difficult to determine in any year how developed a particular resource base is or will be.

The company's financial ability to deal with any relating mine hazard changes from time to time, from cycle to cycle. So the current provisions of the act that say, "Here is a one-shot time picture of your environmental liability and here is your one-shot picture of your potential economic losses associated with that," are inconsistent

with reality. It doesn't work. It's important to have the flexibility to deal with mine issues, environmental concerns relating to those, as the mine goes through its life cycle and as corporations go through their economic cycle, and that's what this schedule is trying to do.

1510

Closure plans will be filed—same process—but they'll be reviewed from time to time to determine their level of appropriateness. Financial assurances tests will be established at the beginning and they'll be reviewed from time to time to determine their level of appropriateness. That's the way it should be. That reflects the reality of mine development. That does not reflect what the current statute is calling for, so amendments were needed and that's what's here.

We've also responded to environmental concerns, and I put it to you that the amendments proposed in the schedule create a burden on corporations with respect to environmental policing, if I can put it that way, that are higher than the current statute. Why? Because we've provided mine inspectors with essentially unlimited access to information, documents, sites, the whole ball of wax at a moment's notice, without a warrant. Why? Because we said to the minister, "You need the powers to be able to move today to deal with today's environmental issue," not tomorrow to deal with today's environmental issue, because tomorrow is a completely different day and it has associated with it potentially completely different hazards. The minister needs the power today. We've given him that in this particular legislation.

Schedule P, another one that attracted reams of attention during the hearings, as you can probably expect, amended the Ministry of Correctional Services Act quorum. No comment—saves us \$300,000. That's what we're doing.

Finally, schedule Q, amendments to various statutes with respect to interest arbitration: As you probably expect, we heard a significant amount of public input on this particular schedule. But we put the schedule in this act because it's part and parcel of our need to identify a fundamental fact: that in 1996 the ability to pay additional increases in the public sector is limited to none; period.

Anybody who does not agree with that, I encourage them to step out of the room, stop John Q. Public and say, "Excuse me, sir, could I have another \$100 in tax from you?" I think you'll find a very clear answer, and it's not going to be in the affirmative.

The population of this province is taxed. We aren't at the tax wall; we're over it. Anybody who believes that there's an unlimited source of money there to tap, to resolve arbitration issues, is simply not dealing in the reality of 1996. We heard deputations saying, "Well, arbitrators believed that ability-to-pay criteria in 1967 or 1972 were inappropriate." Of course they were. Of course they were inappropriate then. The financial positions in 1960, in 1970 and even in 1980 are like night and day compared to now. I put it to you that the financial situation between 1990 and now is significantly different, with another \$50 billion in debt hanging over each and every one of our shoulders and our children's shoulders. But certainly to compare and say that we were in the

same economic reality in the 1980s and 1970s as we are now is, to put it mildly, a big stretch of one's imagination.

We need to have criteria laid out in law that instruct arbitrators about what it is they must consider. Is it the full basket? No. They can consider other relevant factors, and we've brought in amendments to deal with other relevant factors that they may or may not want to consider. But fundamentally it's crucial that they focus on where the money is coming from to pay for the award.

Mrs Papatello: Is it level of service?

Mr Sampson: Somebody's got to check the bank account first.

Mr Cooke: So why are you cutting taxes?

Mr Sampson: You and I don't go and buy the freezer and the fridge and the car without checking the bank account.

Mr Cooke: No, but you're going against—

Mr Sampson: We all have to behave by the same rules financially and economically. The banker's over our shoulder saying: "No more overdraft, Mr Province. Deal with the reality."

Mr Cooke: So why are you cutting taxes?

Mr Sampson: The taxpayer's looking over our shoulder saying: "No more taxes, please. I've had it. In fact, you're taking way too much."

Mr Cooke: Why are you cutting taxes?

Mr Sampson: Because we're taking away too much.

Mr Cooke: You're cutting taxes in order to increase the deficit.

The Chair: This is Mr Sampson's time, please.

Mr Gerretsen: A point of order.

The Chair: Mr Gerretsen, no, this is Mr Sampson's time. You have your time coming up.

Mr Gerretsen: You don't even know what I'm going to say, so you don't know what my point of order is. All right. If you don't want to hear my point of order, then fine, let's go ahead. At least we know where you're coming from.

Mr Sampson: Mr Chairman, to facilitate my friend to the left, this is the last schedule. I just want to close by reminding the committee that, frankly, we campaigned on a pledge to the province, to the voters and the taxpayers—

Mrs Papatello: No health tax. That's one of them.

Mr Cooke: No new user fees.

Mrs Papatello: No health tax, no user fees. What else did they say wouldn't be taxed?

Mr Sampson: Can I continue, Mr Chair, or does somebody else want the floor?

The Chair: They seem to.

Mrs Papatello: I'd be happy to take the floor.

The Chair: It's not your turn, Mrs Papatello. It's Mr Sampson's turn.

Mrs Papatello: Then please just finish. If it's a little bit more—

The Chair: Show him some respect, please. Show him some respect and let him finish.

Mrs Papatello: That's fine. I want to hear specifics about the schedules of this bill.

The Chair: It's his turn. He has the floor.

Mrs Papatello: I don't want to hear about a campaign promise that they have yet to pursue.

The Chair: Mrs Papatello, Mr Sampson has the floor.

Mr Sampson: We campaigned on a commitment to this province, unlike some of the members on the opposite side who campaigned on something that wasn't—I'm not too sure what it was. We said to this province we would make major changes to the way in which this province is governed.

Mr Cooke: No cuts to health and no—

Mr Sampson: Not tinkering here and there. We've had the tinkering. The tinkering has gotten us from \$50 billion in debt to \$100 billion. Thanks very much for tinkering. That's it. We don't want any more tinkering.

Mr Cooke: What about new user fees?

Mr Sampson: The electorate said: "Deliver on significant change, government. We expect it, we want it, we deserve it." Bill 26 is part of that program. We're not finished our mandate yet. There are significant changes to make. This is the Queen Mary we're turning around and it's going to take some time. This is a first alteration in course. It's dramatic, yes. It certainly reflects a big change from the status quo, the downward- spiralling status quo, and we're prepared to deliver.

Mr Chairman, I will now yield to my friends on the other side who I think have some questions for me.

The Chair: Thank you. Now it's your turn, Mr Gerretsen.

Mr Gerretsen: This is just on a point of order. I thought the reason the motion was passed was for the parliamentary assistants to run through the amendments, as Ms Johns did, in fairness to her—well, at least she did before lunch; I don't know what happened during lunch—to indicate where the government is going to make some changes with respect to things in the bill they have heard about from the public in the last weeks. All we heard from Mr Sampson was a campaign speech, or maybe that's the speech that ought to have been given by him or by the minister at the time the bill was presented. At least then there would have been some sort of justification for that speech.

It sounds to me as if he hasn't learned anything from the 180 delegations that appeared before the committee because he's still spouting exactly the same thing. He hasn't indicated in any way, shape or form, in any of the schedules, what he has learned from having the public speak to him and the other members of the committee over the last three weeks—

The Chair: Mr Gerretsen, this is not a point of order. You're using your 15 minutes, you realize.

Mr Gerretsen: —what changes the government is prepared to see in what particular schedules of the act. That's the only point I was trying to make: that he has not addressed the issues for which we allowed the parliamentary assistants the opportunity to make a presentation with respect to the amendments. That was the whole purpose.

1520

Mr Phillips: I'll start on schedule Q. Can you explain very quickly the major difference between what was in the bill and the amendment, what the implications are?

Mr Sampson: There are effectively six amendments, five which you might call substantive and one technical. In the area of subsection 6(5.1) and all the other sections similar to that particular verbiage in the other components of the act, we're establishing the fact that the board of arbitration must take into consideration all factors it considers relevant, including the criteria that are listed.

Mr Phillips: What does that mean? What's the real change from what you had in the schedule to what you've now got in the amendment?

Mr Sampson: There was some concern that listing the criteria would have been all-inclusive. Some of the deputies said, "You've listed the criteria, so that's effectively all-inclusive." Our view was that no, it's not all-inclusive, that the arbitrator should consider in his or her view all the relevant factors that have been put to him or her. We had to effectively clean up the language to say that's fine, that's what we intended, that the board of arbitration must consider all relevant factors, but including this list.

Mr Phillips: Most people who came before us said paragraph 2 should be clarified. Right now it says, "The extent to which services may have to be reduced...." Both the management side and the bargaining unit side said we should amend it to say, "The extent to which services may have to be reduced by the municipality...." You've chosen to ignore that, so I assume it is still going to be up to the arbitrator to make the decision on the levels of service.

Mr Sampson: No, that's not correct. The theme of the deputations in front of us was that there was some concern that the arbitrator was determining service levels. None of this language, inclusive of the amendments, indicates that the arbitrator is empowered or required to determine service levels.

Mr Phillips: You've ignored the advice of the municipalities and many of the bargaining units, who said you should clarify it to say, "The extent to which services may have to be reduced by the municipality...." You haven't done that. That language, I think most people would say, still leaves it open to interpretation that the arbitrators can make decisions on the level of service. I guess you've chosen to ignore the advice of the municipalities.

Mr Sampson: I don't concur with you that the language you're proposing substantially differentiates that particular clause from the one we have.

Mr Phillips: That was the recommendation of municipalities. I gather the intent of this motion is to substantially reduce the payments that might otherwise have been awarded under the old rules of arbitration. I gather you've told the bond rating agencies and the municipalities that that's the intent.

I'll just take the fire organizations. This does fundamentally amend the Fire Departments Act although you promised you wouldn't amend it without full costing to the fire organizations. Can you give us the costing that's been done on this to determine how much money this is likely to save the municipalities in firefighting? If you haven't done the costing, you haven't done what you promised the firefighters you would do. Second, just how much money do you expect to save as a result of putting in the ability to pay? You've gone to great lengths to say

this is designed to really cut back on the cost of firefighting.

Mr Sampson: First, on your point that we have told the bond rating agencies that this is what we're doing and that this is going to make them happy, I would put to you, Mr Phillips, that it's the bond rating companies that have told us that we've got to realize we have a limited tax base. They did that three times by downgrading the credit rating of this province, so I think the message was delivered by them to us: "Pay attention. You have a limited tax base." That, Mr Phillips, as you know, is how they assess the ability to pay on a debt instrument. It's the tax base and the ability of that tax base to absorb any increase.

Mr Phillips: But just how much money do you expect these amendments to save?

Mr Sampson: You're asking me to answer a hypothetical question. If I knew what the increases in the allocation were going to be going forward and if I were able to be three years from now sitting in this chair, I would be able to tell you, "This is how much we saved." There is no costing on this. It's impossible to cost, and you know that.

Mr Phillips: The last part of this says, "Nothing in subsection (5.1) affects the powers of the board of arbitration." What does that mean?

Mr Sampson: It relates to the point you wanted to discuss earlier with respect to the second criterion, that we're giving additional powers to the board of arbitration to, for instance, dictate service levels. We felt it was important to add a section that said this is not adding new powers to the board of arbitration with respect to any of the criteria noted above, responding to your concern and some of the concerns that service levels could be interpreted to be dictated by some of the provisions of this amendment.

Mr Phillips: I really find that a confusing answer. You're saying, "Nothing in subsection (5.1) affects the powers of the board of arbitration." In other words, none of those criteria affect the power of the board of arbitration, so aren't we chasing our tail here? If you go through all the work of saying, "Here are the criteria and here are the instructions to the arbitrator," and then you have, as the last line, that nothing in the subsection affects the powers of the board of arbitration, what does affect the power? I think you just said to me that this essentially renders the five criteria irrelevant.

Mr Sampson: No, it does not. The board has never been empowered, to pick the example of determining service levels, to determine service levels. It never has in any of the previous statutes. What we're saying in that particular (5.3) is that the criteria above, specifically paragraph 2 in my example, is not adding powers to the board of arbitration with respect to determining service levels.

Mr Phillips: So they've always had those powers?

Mr Sampson: No, I said they've never had those powers. They've never had the power to determine service levels and we're saying, "Do not interpret this act as giving powers to arbitrators to determine service levels."

Mr Phillips: We've been through three weeks of hearings where you say you are giving new instructions to the

arbitrators. This is a big deal. Al Leach has gone to the municipalities and said, "Boy, I'm going to do this for you." Now, if I hear you properly, you're saying you've added this little two-line thing that says all of that means nothing. "Nothing in subsection (5.1) affects the powers of the board of arbitration." I guess it's the best of all worlds. To the firefighters you can say, "Don't worry, we've taken everything away from them with that two-line statement," and you hope the municipalities won't become aware of this two-line thing until the bill's passed.

Mr Silipo: They'll stop reading at (5.1).

Mr Phillips: Yes, it really is extraordinary. Your explanation is not, frankly, an explanation right now. You're saying that nothing in subsection (5.1) affects the board, so I wipe all those out, and we're left with nothing.

Mr Sampson: No, it's the powers of the board of arbitration. The powers of the board of arbitration are not and never have been, and it's not intended in this legislation, to be to determine and dictate—

Mr Phillips: We only have 15 minutes, and I'm afraid we'll run out, Mr Chair. The other one is just on the pension one.

Mr Gerretsen: Can I ask a question about the arbitration?

Mr Phillips: How much time do we have left?

Mr Sampson: I'd like to hear from the ex-mayor of Kingston.

The Chair: You have six minutes.

Mr Phillips: Okay.

Mr Gerretsen: Are you basically saying with these amendments that the police, the fire, the hospital workers and the teachers in this province are getting too much money?

Mr Sampson: No, we're saying that the board of arbitration must consider the ability of the people funding those particular boards and operations, their ability to pay for it.

Mr Gerretsen: Are you saying that past arbitration awards have been too high in relation to the municipalities' ability to pay? Is that what you're saying?

Mr Sampson: We're saying that the arbitration decisions in those particular areas of the public sector must behave and start to deal with labour issues like the private sector has, which is to reflect—

Mr Gerretsen: Right, but they haven't in the past, or else you wouldn't—

Mr Sampson: Are you going to let me finish?

Mr Gerretsen: Yes.

Mr Sampson: —which is to reflect the ability of the payor to pay, which is to reflect negotiations and concessions with respect to working more efficiently and effectively. Productivity bargaining, which has happened in the private sector, can under this particular section of the bill be reintroduced and brought to the fore in the public sector.

Mr Gerretsen: And they haven't in the past. That's why you're making these changes. They haven't worked effectively in the past, as far as you're concerned, or else changes wouldn't be necessary.

1530

Mr Sampson: We're saying that in 1996 you need to deal with economic realities in 1996, not in 1967. If you have difficulty with that, I'll have you look back at the books in 1967 and tell me we're in the same financial position.

Mr Phillips: The last year the Conservatives ever balanced the budget was 1969, so don't give us any lecture on managing the finances. I love your survival in a downturn. I've never seen a company with a big problem declare a \$5-billion dividend as you're going to try. It makes no business sense to me.

I want to get to the pension plan. You said earlier that this was a law passed in 1987 and no one raised any concerns.

Mr Sampson: Right.

Mr Phillips: I hate to break the news to you, but the Conservatives were in the Legislature then. You were there when this law was passed. You tried to break the law; you tried to take away these benefits from pensioners by passing a regulation. In July of this year, quietly, the cabinet passed a regulation to try and take away the benefits. You were caught. You were taken to court. You were proven to be acting illegally. So what do you do now? You are trying, through this bill, to exempt yourself from the Pension Benefits Act. I find it embarrassing that you're doing that. If you don't like the law, bring the law before the Legislature and debate it, have it out there, but you're trying to exempt yourself.

I want to get clarification from the government. You tried to do this illegally through regulation. You were caught. You're now trying to exempt yourself from the Pension Benefits Act. This is money that these people are legally entitled to. You're going to lay off, I'm told, 13,000 people. Why are you persisting in acting in a way that discriminates against our own employees by exempting yourself from the Pension Benefits Act? You've given no explanation. We fully expected to see an amendment brought forward to deal fairly with this. Why are you continuing to want to exempt yourself from your legal requirements to deal fairly with pensioners in the province?

Mr Sampson: Mr Phillips, I think you were around at the time this act was amended. The reason the windup provision was brought in was to deal with how pension surpluses were being treated at that time. The concern with respect to pension surpluses—and the concern was more in the private than the public sector, obviously—was that to allow a private sector employer access to pension surpluses could potentially hinder the ability of that pension fund to honour its commitments to the employees, subsequent to a wind-down or a bankruptcy or a dissolution.

Mr Phillips: But it was designed to give benefits to people impacted by that windup too, and that's what you're doing.

Mr Sampson: No. It was designed to do that because there was some concern about the future of the surplus to honour the pension commitments, the base pension commitments. The employees at the time, regardless of whether there was a significant windup or not—

Mr Phillips: Can I get a quick question; we have so little time. You said you have no amendments to the freedom of information act.

Mr Sampson: That's correct.

Mr Phillips: You gave us amendments on Friday.

Mr Sampson: I think you'll find that they are probably going to be ruled out of order.

Mr Phillips: So you've withdrawn those amendments now? We had them Friday—

Mrs Janet Ecker (Durham West): They haven't been tabled yet.

Mr Phillips: But you gave them to us to study. What are you saying, that they're irrelevant?

Mrs Ecker: No.

Mr Phillips: The people can hear this. They gave us these amendments on Friday afternoon—presumably, you've had all these weeks to study them—and you withdraw them on Monday morning? What are you doing?

Mr Sampson: Those particular amendments and one also in the Mining Act, you'll find, are out of order with respect to the procedures of this committee and the House.

Mr Phillips: Whose show are you running here?

Mr Sampson: We will need to have unanimous consent to bring them forward and we may bring them forward. They are technical in nature, as you know, if you've read them, they are not substantive, so we may bring them forward as amendments that will require unanimous consent to be dealt with. But at this point in time, they're not in order, so I don't understand what the issue is.

Mr Phillips: The issue is that you've had all this time to prepare them, to give them to us on Friday and withdraw them Monday.

Mr Silipo: I want to get to some real questions. I'm going to jump into a couple of different areas. I have questions on virtually every schedule, but I want to make sure I get to the ones that are most pressing and pick up the others as we go through the clause-by-clause if we're not able to now.

I have to say I can understand now why the government members wanted to change the order, because had Mr Sampson gone first, he would have set the context in terms of the government's rhetoric around this. I just find it passing strange that we can be lectured about how private companies would be behaving in a down cycle, that they don't survive by going to the bank for more money, I think were Mr Sampson's words, or we have to check the bank account to see where the money's coming from, if we've got the money. But, Mr Sampson, this government has no qualms whatsoever in going to the bank to borrow money to give a tax cut to the rich of this province. The logic is just flabbergasting, and I'm sure we'll talk more about that as we go through not just this bill but the term of this government.

But let me get to a couple of particular sections, starting with the last one, on the arbitration. I want to be really clear, because I actually had understood that what the government wanted to do with this section was to really put a real emphasis, as Mr Sampson I think said at the beginning, on this question of ability to pay and

really say to arbitrators, "We think you need to put these things into your equation, that where employers, public sector employers, say they can't afford to pay more than X, that's basically what you need to be not just considering but in effect putting into the arbitration award." Is that in effect the direction that the government still is saying comes as a result of this section of the bill?

Mr Sampson: As I said earlier, and I'll try one more time, this particular schedule attempts to bring to the attention of the board of arbitration, amongst other things to be considered in an arbitration decision, some fundamental criteria that must be considered as part of the process to determine an award.

Mr Silipo: I think that's the point I wanted to get at, and I guess I would just ask Mr Sampson the question this way: Are you just interested in having them consider these things or are you interested in having them actually apply it, whether it's the ability to pay, whether it's the extent to which services may have to be reduced if there are no tax increases etc etc? How does the government interpret this section is I guess what I'm really asking. How will you explain it to a municipality? Maybe that's the other way you might answer it, Mr Sampson.

Mr Sampson: I think the wording, frankly, of the proposed section is quite clear. It says "shall take into consideration," and it goes on.

Mr Silipo: And then, when you get to subsection 6(5.3), which says that "Nothing in subsection (5.1)," which is the one that lists all of those things, "affects the powers of the board of arbitration," let me give you an explanation and just ask you whether you would agree or disagree with this.

It seems to me that an arbitrator looking at this would say: "Okay, subsection (5.1) says I have to consider all of these things, but subsection (5.3) says nothing in those considerations affects my power. So I can consider those things, and then I can deem them to be invalid, completely." Is that the message you want to give people out there?

Mr Sampson: If that's the decision of the board of arbitration and it's considered all the facts, inclusive of the ones that have been enumerated, that may well be the decision. We are not directing arbitrators, as was proposed by some of the deputants. We are not directing arbitrators that the decision is zero, or minus five, or plus 10. That's a decision they are empowered to make. That's their responsibility. That's within their authority.

Mr Silipo: So you're quite clear, particularly with the amendment in (5.3), that you're saying to arbitrators, "At the end of the day, you're the ones who make the decision; you're not bound by anything that's in this legislation."

Mr Sampson: They are bound by this legislation. They are bound to make sure that they have considered all relevant facts, including these five points. Right now there's no requirement for that.

Mr Silipo: But the weight that they give to them, Mr Sampson, you're saying is really up to them at the end of the day to determine.

Mr Sampson: The weight that they consider to any one of these components, including the ones that aren't

listed here, is up to them to decide. That's the purpose of the board of arbitration.

Mr Silipo: What's the point of having those things in the legislation? We've heard, and you were there for most of those hearings, that in fact in every case of arbitration today, every employer makes exactly the case that's listed in (5.1). They make all those arguments. There's nothing to prevent them from doing that. What's the point that you achieve, other than the rhetorical value of putting those things into legislation?

Mr Sampson: The point was that it was not clear in the deputations from the municipalities throughout the last three weeks of hearings that the arbitrators did consider the relevant facts, inclusive of these criteria. It was not clear. In fact, as I recall, one of the deputants—I think it was on record; I can't remember whether it was nor not—in complete disregard of the municipality's ability to pay, as they were leaving, apparently—this is the comment that I heard—as they were leaving the arbitration hearing, said: "I can't remember whether the request was 8% or 10%. Oh, I'll give you 10%."

Mr Silipo: I think municipalities are going to be surprised by Mr Sampson's answer, Mr Chair, because I don't think that's what they were expecting. I think what they were expecting was a direction to arbitrators, and I think that's how they read it and in fact that's how the earlier version was. But I think Mr Cooke wants to pursue this point.

1540

Mr Cooke: I just want to ask on the process, then, are we not likely to have a case made before an arbitrator, a case referred to an arbitrator, the arguments will all be made and then the ruling will come down, and if the employer is unhappy, then the employer will be able to appeal the case to the courts on the basis that these criteria had not been adequately taken into consideration? Won't we now see that there'll be a lot more arbitration cases appealed to the courts on the basis of the fault in law?

Mr Sampson: That presumes, Mr Cooke, that the board of arbitration's not prepared to list, as it normally does, in its decision—

Mr Cooke: No, no, it's because—

Mr Sampson: Are you going to let me finish?

Mr Cooke: No. Let me just put it to you—

Mr Sampson: If you don't want the answer to the question, then don't ask it.

Mr Cooke: But you're answering the wrong question, because if you've ever been on—I was on a school board. I've had something to do with other public organizations that will be affected by this law. I don't believe there's ever been an arbitration decision that I've seen that either side feels they've been adequately and properly dealt with. They're always looking at ways of saying, "No, the arbitrator favoured the workers," and on the other hand the workers saying, "No, the arbitrator favoured management." So you're going to have the employer sitting there and looking at other ways of being able to deal with this.

Somebody must have done some analysis about whether there'll be more cases appealed to the courts.

Mr Sampson: It's our view there won't be. I think you'll agree that when you've seen arbitration decisions,

they've listed relevant facts considered, reasons for decision. I would put to you, Mr Cooke, that in the consideration and the listing and the enumeration of the relevant facts considered, if missing from that was any one of these five criteria, there might be a reason for an appeal.

Mr Cooke: Well, you watch.

Mr Silipo: It's going to be interesting to see how that part of the bill and its application will unfold.

Let me turn to pay equity for a minute. Mr Sampson's comments I think were, "This will bring pay equity to its fundamental basis," and he talked about base pay comparison. I'm not sure what he was talking about there. I'm sure he can explain as he answers a couple of these questions.

I guess the essential point I want to pursue here is this: First of all, does the government have any intentions of further repealing pay equity beyond repealing the proxy pay equity? Because that could be one conclusion I could draw from what Mr Sampson said, and I don't want to draw that conclusion unfairly.

Mr Sampson: I'm not aware of any.

Mr Silipo: Okay. So by eliminating proxy pay equity, we will end up in a situation in which certain categories in certain jobs—obviously, in all of these, we're talking about jobs predominantly filled by women. Some job categories will now be covered by pay equity, others will not. Interestingly enough, the ones that will not be covered, the ones that you are removing by virtue of removing proxy pay equity, happen to also be the ones that tend to be the lowest-paid categories: child care workers, nursing homes, people who work in children's aid societies, many of the other social services.

I just need to understand the rationale. When the government says, "We're bringing pay equity back to its fundamental basis," explain to me, please, the rationale of saying that if a woman works as a school secretary, she will continue, by virtue of the original pay equity provisions, to be covered by pay equity, but if a woman works as a child care worker, she will no longer, once this bill becomes law, be covered by pay equity. Please explain to me the logic of that.

Mr Sampson: I think in your first example, there are comparative jobs in the male class with respect to secretarial services, maybe even within the same school, that would allow one to determine the inequality between the male and female compensation as it relates to the fact that one is male and one is female.

I would also put to you that it was not clear for me from the depositions we heard over the last three weeks that that same comment could be said with respect to child care workers, where there are, for all intents and purposes, very few if any male categories, and if there are then there's a comparable.

It is inappropriate, I think as one municipality brought to our attention in Peterborough, being asked to give pay equity comparisons to a job that's located 300 miles away, in a completely different institution, completely different job environment. Yet that particular comparison would have been covered under the proxy comparison component.

We as a government are committed to the principles of pay equity: the fundamental, base principles of pay

equity. That's a comment I made throughout the weeks. That's a comment I'm prepared to make now on behalf of the government.

Mr Silipo: We maybe just have then a very basic difference in terms of what the fundamental basis of pay equity was, because I and I know many people in this room always thought that the point of pay equity was to deal with the inequities of pay as it affected women, and not just to limit that within the same workforce but in fact across the board in the public sector, and to ensure that in effect there was a way for us to recognize, on the value, on the dollar value that one could attribute to the different types of work that were being done, that women were being compensated adequately. We know that historically there has been an underpayment in jobs that have been performed mainly by women in this province. In fact, the situation has gotten worse.

I guess again we come back to the same basic point, which is the illogic of seeing proxy pay equity, which was brought in exactly to fix the problem that existed with the previous pay equity legislation, which was that it didn't recognize that you had situations in the public sector where you couldn't make a comparison within the same workforce because there just were no male-dominated workforces to compare to, so the next logical thing that you had to do was to go to the next, nearest public sector workforce that would be as close as possible and be able to make the comparator there—

Again, I continue to press this point, because I have to say, even after the three weeks of hearings, I'm at a loss to understand whether what the government is doing here is really based on an ideological bent or just quite frankly on a royal screwup. I really mean that, because I have a feeling sometimes that they really didn't understand what they were doing by eliminating proxy pay equity. I think they thought they were dealing with the fact that there were some instances where there have been some problems with the way in which proxy has been applied, and I would be the first to say that there have been some problems. But I guess I continue to raise the point, hoping that somewhere along the way, in the remaining days that we have, the government will come to its senses on this point and understand that it is wrong for it to eliminate, in the way that you are doing, a fundamental right that affects 100,000 of the poorest-paid women in the province, the lowest-paid women in the province.

I ask Mr Sampson again whether the government is prepared to look at this section again in light of that reality and to do more than the limited amendment that they are proposing, which we certainly think is a little bit of help, at least in helping to ensure that the 3% that is there will continue to be safeguarded, but the difference between 3% and 100% of pay equity is a long ways. Is the government prepared to look at this particular section differently?

Mr Sampson: We have looked at this section as a result of the depositions we've had and this is our position at this point in time, Mr Silipo. But I want to confirm to you that we are committed to the principles of pay equity. We're going to be spending more on it than the previous government did, on the program of pay equity.

With respect to the proxy comparison component, our view is it's not working. The issue as it relates to the compensation—I think the example we're all using is the day care worker—in our view is probably not best solved in the pay equity component but we need to take a look at whether that's appropriate compensation for a job class, period. I think that's the issue the previous government tried to skate around, if I may, by incorporating that into the pay equity component when it should have been addressed head on as another item.

Mr Silipo: Again, I say to the government—

The Chair: Thank you, Mr Silipo, and thank you, Mr Sampson. The time is up.

Mrs Pupatello: Mr Chair, I have a point, please. May I enter a question, at least on the record, so that I can have an answer either after the meeting, in writing, whatever's going to be easier? The reality is, this is schedule Q. The likelihood at this rate is we will not get to these questions in a clause-by-clause by Friday. The frustration that we on this side feel at finally having access to someone who at least attempts to answer a question, that is, once we get can past the rhetoric of a campaign and actually get to specifics—

Mr Gerretsen: Which took a while. It took half an hour.

The Chair: Your question here, Mrs Pupatello?

Mrs Pupatello: You don't know how frustrating this is for the rest of us, and particularly those new who want to see something actually happening.

In schedule Q, subsection 5(2), there's been a change in the amendment that's being put forward in the criteria for teachers specifically: "4. A comparison, as between the employees and other comparable employees in the public and private sectors...." The only difference in this amendment being put forward as it relates to the School Boards and Teachers Collective Negotiations Act is the addition of "and private sectors." I'd like to know the rationale for this amendment. I'm assuming it's because you're attempting to drive the salary levels of teachers down to private teacher levels, but I need to know that that is the case.

There are a number of things that the minister is currently doing publicly that we're not aware of and we read about in the media, such as eliminating the preparation time etc for teachers, but I'd like to have the answer to this and many other questions.

Mr Chair, I'd just like you to know how frustrating this process has been, not to have access to people who at least would attempt to answer the questions, albeit not the answers we're looking for. This whole process is flawed, and I think you should know we feel very strongly about that.

Mr Gerretsen: I'm not sure whether they're hearing it yet.

The Chair: As agreed this morning, we will now have a 15-minute recess.

The committee recessed from 1551 to 1606.

The Chair: Welcome back. By our fast watch on the wall, the 15 minutes is up, as noted by Mr Phillips. Mr Hardeman, you have the floor.

Mr Hardeman: Good afternoon to everyone. First of all, I agree with Mr Sampson and his analogy of the

situation we find ourselves in, the fact that we have a money crunch in the province. I think municipalities have realized that, along with the province. They're prepared to deal with the situation and cut the size and the cost of government in that area, but to do that they require changes and ways of dealing with that chore. They can no longer go along with the status quo, providing the programming as the province dictates and then paying for it, without having municipal taxes increase dramatically.

I do not intend to go through a long list of things that are self-evident or that have been said many times in the past three weeks as we've travelled the province and talked to different deputants. I just want to maybe question the members of the committee, as I am the third parliamentary assistant to make a presentation. The first one was criticized for speaking just to the amendments, the second one was criticized for not speaking to the amendments, and I hope I can find a happy medium so we could all agree we've met that challenge.

Mr Cooke: How about a suggestion?

Mr Hardeman: A suggestion would be acceptable.

Mr Cooke: If you could outline for us the amendments, what they will do and why they're necessary, that would be very helpful.

Mr Hardeman: I will start off and follow the directions suggested to me. We will start with the amendments.

The first amendment is subsection 25.2, in the definitions section of the bill. It defines the term "resident." The term "resident" is required to be defined. As we go on into the restructuring proposals, we will find there is a requirement for 75 residents to apply to the minister for a commission in the unorganized territories, so we need the definition of "resident" in the act. That's the reason for that amendment.

The next one is a technical amendment. It was just the wrong numbering of a subsection in the bill. I think that's self-evident.

The next amendment is to section 25.2, removing the clause of municipal liability. There were many concerns expressed during the hearing process that the fact it was there was a detriment to municipal politicians because they might feel they could not make decisions for fear of having to go to court to defend those decisions. Upon further examination, we find that a municipal politician is already governed by law if they do what they do not have the power to do, so the section is not required to deal with the issue, and it's suggested that we will remove that section completely from the bill.

1610

The next is to section 25.3, and this is to deal with appointing a commission. The act presently provides for the local initiative for restructuring, where municipalities proceed with the process of restructuring and then recommend a proposal to the minister which the minister can implement, and it goes on to suggest that the minister can appoint a commission. Many deputants to the committee as we travelled the province suggested that there needs to be more public input into the appointing of commission, so this amendment to the act sets out a process that the commission must follow as a minimum standard for achieving public participation.

One of the first items the commission must deal with is to prepare a draft report. He must then post that draft report at a minimum of one public meeting, where anyone present has the opportunity to speak. It must then be presented to every municipality involved, and upon having achieved that, he must then print a final report. It outlines the process he must go through in providing the municipalities and the public with notice of when that report has been completed, and provides a 30-day waiting period from the time the final report is completed to the time it can be implemented by regulation.

The committee will note that in that amendment is where we have need for the definition of "resident" as it applies to the unorganized territories that may wish to initiate a restructuring proposal through the commission. They can do that with the signature of 75 of the defined residents.

The next amendment is to section 25.3 of the Municipal Act, allowing the minister to add additional requirements to a restructuring commission that may go above and beyond the requirements in the previous amendment. It has been concluded from the deputations that there will be great variance in the type of restructuring proposals put forward throughout the province. In some areas, it will just require the amalgamation of two municipalities; in other areas, it may require the changing of total counties or groups of counties. Each instance, because it is unique, may require different types of proposals, and this gives the minister the authority by regulation to implement those types of changes or requirements.

The next section is to section 210.4 of the act, section 8 of the bill. This deals with the definition of "local board," and will define that the police services boards and the school boards are not considered a local board for the purpose of dissolution by local municipalities. There will be the opportunity to expand on those that would be exempt from dissolution through regulations, but the police services boards and the school boards will be exempt in the act, the school boards of course for constitutional reasons, the police services board because there is presently a province-wide review ongoing to deal with police services, and we would not want its results to be pre-empted by municipalities wanting to dissolve the police services boards—what shall we say?—before their time. The end result of that study is not present so it was felt appropriate that the police services boards would be exempt by legislation from dissolution by local councils.

The amendment to subsection 220.1(1) of the act points out that the school boards and hospitals do not have the power to pass bylaws to charge user fees, and it goes on to add that the crown and all others will be obligated to pay municipal user fees as they're imposed by municipalities—just for clarification about who can charge and who must pay.

The next amendment is to clarify the situation about the type of taxes that will be allowed to be charged. As the committee members will be aware, we've had a number of deputations about how they would interpret the ability to charge user fees and the type of tax they would be allowed. Some came forward and suggested that direct taxation such as an income tax or a fuel tax, in their opinion, may be allowed. We did have a legal opinion

tabled with the committee that they would not be allowed, but enough deputants came forward with the suggestion that there was some doubt in their minds as to what could or could not be done that, rather than having municipalities and the province spend a lot of time in court or having the minister—

Mr Phillips: Resign.

Mr Cooke: Or at least temporarily step down.

Mr Hardeman: No—be forced to pass a regulation to prohibit a type of tax they did not feel was appropriate, it was felt to be appropriate that we clearly define the intent of the legislation, which was put forward to the committee the morning that the minister spoke to the committee, that these types of taxes would not be allowed. We are clarifying that that would in fact be the case.

I would point out that this amendment is the one Mr Phillips spoke to this morning, where there were amendments and now there are amendments to the amendments. This amendment is the combination of the two amendments, one dealing with poll tax and one dealing with the other type of taxes. Legislative counsel deemed it appropriate to have it in one amendment.

Mr Phillips: Where did the "generation, exploration, extraction" clause exist before?

The Chair: Mr Phillips, would you please hold your questions until it is time to answer your questions. Let him finish his process here, please.

Mr Hardeman: The next amendments are two very minor amendments, changing the word "a" for "any," substituting "a trade" for "any trade, calling" in the legislation. That would imply that a clergyman travelling door to door in a municipality could be caught up in that. There was, in our opinion, no need to have "calling" included, so "calling" will be removed.

The next one is section 22, subsection 257.1(1) of the act. This in effect prohibits or eliminates the ability of municipalities to license businesses or resources extraction that is already licensed and under the jurisdiction of the Ministry of Natural Resources. They would not be allowed to license resource extraction.

Section 22, subsection 257.2(2): This is changing the wording of subclause (i) to "requiring the payment of licence fees." It's to remove the ability to change a licence fee to charging it in the nature of a direct tax. It will now read "requiring the payment of licence fees." It actually puts the limit on a licence fee as opposed to being able to put in another type of tax. It puts a ceiling on the licence fee.

The next is section 22, subsection 257.2(2):

"Licence fees

"(2.1) In setting the amount of fees to be charged for a licence, the council shall take into account the costs of administering and enforcing the bylaws of the municipality licensing businesses."

1620

So the cost of licences must relate to the cost of licensing.

Section 257.7: This amendment is to clarify that only provisions of other acts which may be overridden by municipalities when licensing provisions which allow municipalities to license other businesses—so the issue

that they can override other acts; they can only override other acts as they relate to the licensing provision. There are different acts presently in existence where they give authority to license certain types of businesses or certain types of licences. This will override that act. It would not override other acts that relate to other issues.

The next two are amendments that deal with the block funding.

Mr Phillips: I've got the municipality of Metropolitan Toronto as my next one.

Mr Hardeman: Yes, it's the issue of Metropolitan Toronto. It's to deal with the ability to put the funding into block funding. The two sections of the act—there are two that require to be changed in the Metropolitan Toronto act, because they deal with how roads shall be funded. Since they will not be funded that way in the future, it requires the removal of that part of the act.

I would point out that I have been informed that in all probability those two will be ruled out of order because in fact it does open up a section of the Metropolitan Toronto act that is not presently in Bill 26. It's an issue of cleaning up the act. The funding is being provided that way, but this will—we'll have to wait for the ruling of the Chair as to whether that is the case.

Section 31, subsection 3(1) of the Ontario Municipal Support Grants Act. This is the last four lines: "Upon the recommendation of the Solicitor General and Minister of Correctional Services concerning police or fire services, or upon the recommendation of the minister concerning other matters."

The purpose for this amendment is that the present act says that the Minister of Municipal Affairs has the authority to set the standards and to withhold funding if the provincial standards are not met. It was deemed appropriate for the services that are governed by the Minister of the Solicitor General and Correctional Services that that minister should have the authority to administer those standards. So that's the reason for the amendment. It's the same number of standards; it's a different ministry that will have the power to administer them.

The next amendment, section 31, subsection 3(4), is in fact that same issue, having the Solicitor General being the authority in order to authorize the withholding of grants if the provincial minimum standards are not met in that ministry.

Section 33.1, subsection 23(10), the issue in the regional act: Again, it deals with the funding as it relates to the block funding, and we're taking that out of the regional act, that they would not be funded and would not be governed in the same way. Also, the requirement to pass bylaws as they relate to receiving the municipal road grants presently; this will not be required since they are not getting municipal road grants. So it is again a clarification of the act.

Subsection 34(2), page 157: Again, it's repealing subparagraph (d) of paragraph 4 and it's a technical amendment just to clarify the subparagraph. The letter (d) was used as opposed to the letter (c).

The next one, again, is the same issue. It's subsections 39(3) and 39(4) as they relate to the County of Oxford Act. It's the same as the other regional acts, removing the references that automatically come out under Bill 26 and

all others as opposed to those that are governed by their own act.

Mrs Papatello: We don't have a copy of that 39?

Mr Hardeman: Again I would point out to the committee that the clerk may have removed that 39 because that would be another one that was identical to the ones I mentioned earlier. They may be out of order because it is taken out of the Oxford county act when the Oxford county act is not presently in Bill 26.

The Chair: They were withdrawn. They were pulled out.

Mr Hardeman: Subsection 39(7): Again, subsection 39(7) is identical. It's to the district of Muskoka, dealing with the same issues.

Section 41, section 13.1 of the act dealing with conservation authorities: Again, it deals with the issue of the dissolution of conservation authorities.

"Notice of meeting

"(4) The authority shall ensure that notice of the meeting is published in a newspaper having general circulation in each participating municipality at least 14 days before the meeting.

"Public representations

"(5) No vote shall be taken on a resolution requesting dissolution of the authority unless members of the public have been given an opportunity at the meeting to make representations on the issue.

"Dissolution

"(6) The Lieutenant Governor in Council may dissolve the authority, on such terms and conditions as the Lieutenant Governor in Council considers appropriate, if,

"(a) the minister receives a resolution requesting the dissolution passed by at least two thirds of the members of the authority present and entitled to vote at a meeting held under this section and at which a quorum was present; and

"(b) the minister is satisfied that acceptable provision has been made for future flood control and watershed interests and for the disposition of all assets and liabilities of the authority."

This again is an amendment to clarify the process required for the dissolution of conservation authorities.

The next amendment would be section 42.1. This is an amendment that will require unanimous consent from the committee to be used. The purpose of the amendment: The bill presently does not have the ability of the province to appoint members to the authority but it would still have the opportunity for the province to appoint the chair and the vice-chair. So the recommendation in the amendment is to also remove the province's right to appoint the chair and the vice-chair. With unanimous consent, that would be the amendment put in.

1630

Subsection 43(1.1): The operative clause is "to charge fees for services approved by the minister." This will deal with giving the authorities the ability to charge fees for service for some of the functions that they are presently providing and even other functions that the municipalities under whose jurisdiction they would be operating would want them to provide. This would give them the authority to provide those on a fee-for-service basis.

Section 45, section 24 of the Conservation Authorities Act: This is to approval of projects.

"Before proceeding with a project, the authority shall file plans and a description thereof with the minister and shall obtain,

"(a) the approval in writing of the minister for the project and its funding; and

"(b) if any portion of the cost of a project is to be raised in a subsequent year or years, the approval of the Ontario Municipal Board."

"This section does not apply to a project if all the participating municipalities approve the project and its funding, unless the project involves money granted by the minister under section 39."

It will not require the minister's approval for projects that are being funded totally outside the provincial realm.

The next section is 46, page 163, and it's an amendment to change the French translation. There's been much discussion of whether one understands the bill, and I'd be the first to admit that this section I do not understand because I do not speak French. But it is a change of a word.

Mr Gerretsen: How refreshing: an honest government member. You've shocked everybody in the room, Ernie.

Mr Hardeman: I would never shock anyone.

The next section is subsection 50(1), subsection 44(2), and it's an amendment to deal with the bylaw levying county road dollars on lower-tier municipalities, the ability to give the local flexibility to charge those who are using or have use of county roads and those who do not. There will be some changes as the road structures change and as roads go from the upper to the lower tier and the other direction. There will be municipalities that presently do not have any roads in their municipalities under the county jurisdiction that in the future may have, and this will give the county the ability to levy those municipalities, as deemed appropriate by county council.

Subsections 50(2) to (4): Under the Public Transportation and Highway Improvement Act, this is to deal with the ability of municipalities to decide on the migration of the road authorities and to provide the ability for a road that was moved from the upper tier to the lower tier to be vested in the lower-tier road system and vice versa, so if an upper tier were assuming the responsibility for a lower-tier road, it would automatically be vested as a part of the county road system.

Section 58, subsection 75(1), again deals with the Public Transportation and Highway Improvement Act. This will allow the province to make arrangements directly with the council of an Indian band without necessarily involving the government of Canada.

Again, the next one, section 58, subsection 75(3), deals with the same transfer to enter into an agreement and standards.

Section 67, clause 117(e), is to remove a section of the act. Again, it has to do with the change in the way it's funded.

Section 67, subsection 118(2): again, that the province will be able to deal with the roads on Indian territory without going directly through the federal government. Subsection 118(2) is of a similar nature to deal with the Indian situation on the roads on the reserves. That con-

cludes the amendments that we put forward. I'd be happy to try and answer any questions you might have on it.

The Chair: We now have 15 minutes for the opposition party for questions, beginning with Mr Gerretsen.

Mr Gerretsen: First of all, let me say it was kind of refreshing to have somebody actually go through the amendments without the political speech and rhetoric that we heard earlier.

I just want to get this clear, though, because I think it's fair to say that a lot of municipalities that came before the committee were of the opinion that they were getting much broader taxing, licensing and fee powers, which they supported mainly because they were going to lose revenue by way of transfer payments from the province. I think it's also fair to say that many of the chambers of commerce that came before the committee, although supportive of the title of the bill, had some major concerns about some of these broadening areas.

If I look at the amendments that are being suggested, and I'm specifically dealing with amendments to section 220.1 on page 147, you're saying that no poll taxes or anything like poll taxes are now possible. In (2.2)(a) you're saying no income tax is possible. In (b) and (c) I guess what you're getting at is that there's no gas or usage tax possible etc. But I would like you to explain to me, as parliamentary assistant, what then is the difference between the rights and powers that municipalities will have in the future and the way it currently exists in legislation if you're going to exempt or not allow those three main categories of taxation that there's been so much discussion about in the media and before our committee. What new powers, in effect, are you giving to municipalities? It seems to me there aren't any that they don't already have right now.

Mr Hardeman: I think first of all I would agree with you that we had presentations from the municipal sector that said they wanted more powers, and we had presentations from the chambers of commerce and the boards of trade that said they were concerned with the powers that were being vested in municipalities. I guess being in government it's very difficult to please everyone, so I would be the first to say this act and these amendments do not do that. They deal with the principle of what is best for everyone. I really don't believe there were any municipalities that came forward that realistically believed they could charge gasoline taxes or that they could charge income taxes. They said they would like to, and yes, they hoped this would allow them to, but I don't think there were any, including Hazel McCallion, who said, "We can do it." If I remember correctly, and maybe someone can read the Hansard back to me and correct me, but I think she said, "Maybe now we won't have to ask the government to allow us"—maybe not. I don't think anyone realistically believed they could do that. They hoped they could.

Mr Gerretsen: Ernie, I beg to differ with you, and Hansard can correct us on that, but that's not the issue. You have now taken those three areas about which there was a lot of discussion and a wide-felt feeling, as far as I was concerned, within the municipal sector, that they could at least look at those areas. Whether they were going to impose it or not was going to be entirely

dependent on their own fiscal and financial situation. The point is, with these three amendments you've basically taken away those areas where municipalities thought they were getting more power.

My question to you is very specific: Taking into account the amendments and taking into account the clause as framed in schedule M, what additional powers, if any, will municipalities have, according to the ministry thinking, that they don't already have now, before Bill 26?

1640

Mr Hardeman: I think, Mr Gerretsen, there are two things they will have that they did not have before. One is a broader range of things that they can license which previously was done based on a given list. The second thing they will have is that they will be able to license on a cost recovery basis. Under the present legislation there are a lot of licences they are allowed to license but that are a given amount they can charge. The ability to work on a total cost recovery will now be available to them.

Mr Gerretsen: Right, and I realize there were some of the old licences that didn't make any sense—for example, a dollar for a bakery and stuff like that. Is it your feeling then that with this additional licensing power and fee power that municipalities have, they will basically be able to recover the amount of grants they've lost from the government over the next two years, which is going to amount to something like 50% of the government transfer payments?

Mr Hardeman: No. I do not believe that the intent was before or that it is today that all the reduction in grants can be recovered in user fees or licensing fees. The intent, hopefully, is to provide the opportunity in other areas for restructuring and reducing the cost of government, that in fact the cost of governing at the local level in the municipal sector will be lower. The intent is not to just turn all the reduced grants into another form of revenue through licensing or user fees. The intent is to reduce the cost of government.

Mr Gerretsen: Okay. Dealing with the restructuring area, and then I'll turn it over to Gerry, I realize that you've added some public process into the notion now. But I also still think there is one serious flaw, that there is no requirement still for a public meeting after the draft plan for restructuring or after the commission has come out with a draft plan. It talks about, "It shall give a copy to the municipality and to other people," but it really doesn't allow for any kind of public exposure, if I can put it that way, of any draft plan at a fully constituted public meeting, for further public input. But we can deal with that when we deal with it on a clause-by-clause basis.

Mr Phillips: Yes, the—

Mr Hardeman: If I could, just to take some of your time, I would caution or suggest in your question that the requirement for public participation is after the completion of the draft plan for the restructuring, not prior to the draft plan. There is a need for public consultation after the plan has been prepared.

Mr Gerretsen: I would suggest to you that it's required just as much before and after the draft plan. I don't think you should come to a draft plan stage without

getting some input from the public, or a lot of input from the public. I don't think this should happen after, in effect, the die has been cast.

Mr Phillips: I want to follow up on the licensing thing. I gather the fees—I call them the "save Al Leach amendments"—are designed to correct a problem that exists in the legislation that he didn't think existed. He said he wanted to resign if he was wrong and then he went out and proved himself wrong, one of the more extraordinary things we have seen, actually: a minister calling for his own resignation and then proving he was wrong.

Mrs Ecker: Better get a new line. You've used that one twice before.

Mr Phillips: Yes, but I actually didn't interrupt you and I think people are always—

Mr Gerretsen: If it's the truth, it's worth repeating.

Mr Phillips: That's true. I think people always are interested in incompetence being pointed out more than once so they know what kind of government they're dealing with.

My questions are on the licensing provisions. In spite of the amendments you've put in here, I think the Ontario Restaurant Association and the city of Kingston would both argue that the way the licensing provisions are written, because you say "requiring the payment of licence fees," and you're giving quite unlimited flexibility for licences, and you say, "If there is a conflict between a provision in this part and a provision in any other section of this act or any other act," having to do with the licensing, that the one that favours a municipality, "that is less restrictive of a local municipality's power prevails," that the municipality can interpret its interpretation over anybody else's. I read that to mean that a municipality could impose a licence on a restaurant on the basis of its sales, 1% of sales. The city of Kingston I think felt that you could put as part of their licence, for example, a cent a litre for gasoline. I don't see anything in the amendments, other than that you've taken out the words which may be in the nature of a tax, but you still say "requiring the payment of licence fees."

Can you give us the legal support that would say what I think is true is not true; and if you can't, is that what we should expect, that this gives the municipalities—and I know you want to give them unlimited flexibility—under the licensing provision, the opportunity to implement essentially indirect taxes disguised as a licensing fee, as the Ontario Restaurant Association says?

Mr Hardeman: No. I don't believe that the legislation allows for variable licensing fees. I think it's the ability to put a licence on an establishment and charge a fee, not a fee on an ongoing basis as in the nature of a tax.

Mr Phillips: Why would the Ontario Restaurant Association and the city of Kingston both say they believe your law permits that? I've seen no legal interpretation from the government on this matter. I guess I'm asking the parliamentary assistant to get us some written assurances that at least we know what you're trying to do here. If you're trying to permit those things, then let's be sure that's what you're trying to do.

When we were in the fee section, it was pretty clear that in the end that did permit a gas tax, a head tax, an

income tax, and you moved, I gather, to close that. This section still looks wide open to us. If you don't want that to happen, then I suggest you should be looking at some similar amendments. If you do want it to happen, then at least we should know that the city of Kingston's interpretation and the Ontario Restaurant Association's interpretation are correct.

Mr Hardeman: We do not believe that is the interpretation.

Mr Phillips: Will you get us the written legal opinion before the week's out?

Mr Hardeman: We can look into that. I guess I would just point out that the last time we went through the process of a legal opinion, no one wanted to take the legal opinion as the consensus.

Mr Gerretsen: That's why you changed the act.

Mr Mike Colle (Oakwood): We were right.

Mr Gerretsen: It was wrong and you changed it.

Mr Phillips: We asked for a legal opinion and actually, in fairness, the legal opinion did not say that this prohibited taxes. It didn't say that. That's why you amended it, so it worked. Now get us the legal opinion here.

Mr Hardeman: We will endeavour to look into the matter.

Mr Colle: Just a quick question. Say Metropolitan Toronto wanted to impose a user fee for transportation on the Don Valley expressway. Could it still do it under Bill 26, amendments and all, and call it a user fee for transportation and charge people for—

Mr Phillips: They could use a parking fee on the Don Valley.

Mr Hardeman: The question would be how they intended to impose that fee. If the intent or their ability was to actually impose it on the user of the road, the bill would allow that.

Mr Colle: Okay. Thank you.

Mr Phillips: Bingo.

Mr Hardeman: That's it.

Mr Phillips: Several of the mayors said to us—

Interjection: Tolls.

Mr Phillips: That's what they just said, a toll on the Don Valley Parkway, so it's going to take me longer to get down here. I'm going to have to take the back roads now.

Mrs Ecker: It wouldn't make it any slower.

Mr Phillips: Many of the municipalities said to us that they wanted the commission's report—I'm now on the restructuring—to not be final, to be a recommendation to the minister, and I can recall many mayors coming forward and saying that was a strong recommendation. I gather the intent of your amendments is to not listen to the mayors but to make the commission's report law, that once the commission finishes its report it submits a regulation that implements its report; it isn't subject to approval and possible change by the minister. Is that correct?

Mr Hardeman: That is correct. The situation is identical, as it presently exists, with a restructuring or a change in northern Ontario when the process goes through the Ontario Municipal Board. The decision of the Ontario Municipal Board on that type of restructuring is

final and does not go to the minister for approval. This process would be based on that same principle.

1650

Mr Phillips: Just to follow up on Mr Colle's comments that the city of Toronto and Metro Toronto are quite anxious about the Queen Elizabeth Way. I think they feel they've kind of inherited a bit of white elephant. They could actually put a user fee on that road then. They could say to the people coming along that road, "In order to pay for its improvements, we are going to charge you a user fee." That would be permitted under Bill 26.

Mr Hardeman: Theoretically, under the bill it would be permitted. Realistically, it would be very difficult to administer on a road that was not at some point structured where you get on and off to make it a practical approach for getting on and off.

Mr Phillips: It's often stop and go. You just have to go from car to car.

The Chair: Thank you, Mr Phillips. We appreciate your question.

Mr Colle: You just have the transponders. That's all.

Mr Cooke: This is a new aspect of a new focus of Bill 26 to talk about tolls on existing highways that have been recently transferred to local governments. I'd just like to get a better read from the minister or from the parliamentary assistant, who's speaking on behalf of the minister, and the more we ask about this bill the more we understand why the minister doesn't want to appear before the committee.

The position your party took on toll roads when you were in opposition was that tolls should only exist on new transportation systems, on new highways. You're now telling us today that this bill totally reverses that and says that there can be tolls set up on existing highways in Ontario that have been transferred to the municipal government.

Mr Hardeman: No, that's not quite what I said. I said this bill does not specifically prohibit tolls on municipal roads.

Mr Cooke: You've been hanging around Al Leach too long. In other words, Metropolitan Toronto, and there are other expressways in this province: Ottawa and there's one down our way. Some of those expressways have been already transferred to the municipal governments; others the province has wanted to transfer but hasn't at this point. Every one of those municipalities, once they're transferred, would be able to set up tolls. That's what you're saying. Correct?

Mr Hardeman: As the act is today, yes, they could.

Mr Cooke: Are you planning an amendment to this?

Mr Phillips: Tomorrow.

Mr Hardeman: No. I would just point out that any charge, user fee that is deemed inappropriate can be prohibited by the minister by regulation.

Mr Cooke: Let's go back—

Mr Hardeman: But the act says—

Mr Cooke: No, Ernie, let's go back to this because I think one of the key questions that has been asked to you this afternoon has been asked by Mr Gerretsen, that is, in this bill that you've touted—and I would argue and wish I had more time to ask you about how the deal was negotiated with AMO and who was involved in negotiat-

ing the deal with AMO other than the minister, the ministry and AMO and how that process excluded the people of the province—tell us what additional powers there are.

Then you say to us that yes, there is an existing new power in Bill 26 that will allow municipalities to set up tolls, but if the minister feels that it's politically unpopular—in other words, if Metropolitan Toronto set up a toll on the Don Valley or set up a toll on the Queen Elizabeth because there is on Queen Elizabeth \$50 million worth of repairs that need to take place on that highway that you haven't done, that we didn't do either and now you've transferred it to them with those repairs necessary—if they set up a toll in order to pay for those and it becomes a political liability in Metropolitan Toronto, the minister will set himself up as a hero and say: "No, we didn't really mean that. We're not going to allow you to do that."

Now what is the new level of respect that you have for municipalities that you say, "We have given you some additional control over licensing and some additional powers like setting up tolls, but if any of those become unpopular and it's politically popular for us to intervene, we will do so"? What's the respect for municipalities being equal partners when that's the game you're playing?

Mr Hardeman: I would suggest, Mr Cooke, it's not a game we're playing. The definition in the act deals with user fees for municipal services. There is no mention in the act of a toll or a cost to use other municipal services. It deals with a broad definition of charges for municipal services.

Mr Cooke: No, no, no, why would there be? You wanted to try to get this bill through before anybody understood it. You wouldn't print it in a way that people could understand it.

Mr Hardeman: That definition does not exclude such things as toll roads.

Mr Cooke: Right. So does not exclude or does permit. Let me ask you then specifically since—

Mr Hardeman: It does not prohibit that.

Mr Cooke: Which means it permits. Let me specifically ask you then—you would not pass the motion this morning allowing the minister to come forward—if Metropolitan Toronto decides to put up tolls on the Queen Elizabeth or on the Don Valley, is it your government's intention to allow that to proceed or are you going to stop it?

Mr Hardeman: I can't answer that question. I don't know.

Mr Cooke: You have contemplated it.

Mr Hardeman: Hypothetically. We don't know whether they were thinking of doing that, and I'm not in the position to tell you what they—

Mr Cooke: Don't you think that in terms of developing public policy there's some logic to saying that, "We're going to be clear about the rules and we have thought of this, and no, we're not going to allow tolls," or, "Yes, we are going to allow tolls." Or, as you say, "This bill does not permit" or whatever the double negative is that you were using which means that it permits it. Shouldn't you be clear?

You come out of AMO. You used to lecture all of us about the level of respect the provincial government should have for the municipal sector. How can municipalities believe that there's any level of respect from this government when you're saying: "We're going to permit it, but we might stop it. I can't tell you the rules of the game today, but we want the bill passed by a week today"?

Mr Hardeman: First of all, Mr Cooke, I want to tell you that I've never lectured a minister of the crown, including you.

Mr Cooke: Well, it depends whether you're on the other end, believe me.

Mr Hardeman: I think the level of respect is there. The bill is intended to give more local autonomy to municipalities, and I think municipalities see that as what is happening in the bill. I want to tell you that it was not a secret deal made with anyone, unless of course it was made where I was not present. I'm not aware of any deal.

Mr Colle: Who was there?

Mr Hardeman: I wanted to clarify that. I am convinced that it was not done, but I cannot speak for—

Mr Silipo: The minister.

Mr Hardeman:—the world. I just know where I was present and there definitely was not that situation.

Mr Cooke: The only thing you can testify is that you weren't invited to the back room to negotiate this deal.

Mr Hardeman: All I can say is the issues and the discussions with AMO on the same topics coming up with the same requests have been ongoing with not only this minister but many ministers before this minister as to what was required for local municipalities to have more local autonomy.

Mr Cooke: I still don't understand and maybe when there's a longer period of time you can explain to me where the additional local autonomy is when you're saying that if there's an unpopular tax, like a toll, that is imposed, the minister might very well stop it, but we won't tell anybody what the rules of the game are today, and you've got some additional licensing and all of this for a 50% reduction in the grants to municipalities.

All I can say is, I wish the same negotiators were at the table when AMO was negotiating disentanglement with me. Because if they would've settled for that kind of deal, we could've had disentanglement years ago.

Mr Hardeman: I think it's important to recognize that more local autonomy is not an exchange for the money that's not available to municipalities.

Mr Gerretsen: Oh, come on.

Mr Hardeman: The province hasn't got the money to give municipalities. That money is not there. What the bill proposes to do is to give some tools to municipalities to deal with this difference in money.

Mr Cooke: What are those tools? Tell me what the tools are.

Mr Hardeman: Again, the broader licensing and the powers, the broader user fees, the ability to restructure in a timely, efficient manner.

Mr Cooke: Let's just talk about the restructuring for a bit, because you were part of the municipal sector that was incredibly critical of the previous government when we restructured London, and that process, I might remind

you, took about 14 years. Can you tell me, under Bill 26, what the difference would be if you were going to restructure London-Middlesex under this legislation when it passes as opposed to what was done before?

Mr Hardeman: I think there are two things, two major differences. One is the fact that it's the request of the local municipalities for the restructuring to take place.

Mr Cooke: London requested it.

Mr Hardeman: Secondly, it hopefully will not take 14 years, because we do not have 14 years in the provincial or the municipal sector to deal with the restructuring of government and getting a handle on the cost.

1700

Mr Cooke: Okay, London did make the request, and yes, you're right, it won't take 14 years and I don't agree that it should ever take 14 years either. The only thing that takes 14 years is whether a government of the day has the courage to bring the legislation into the House. That's what takes the time, not at the municipal level. It can be resolved at the municipal level or the province can make a decision.

But isn't the major difference now, if this passes, that what in fact will be in place is that if London-Middlesex were to be restructured under this law, there would never be legislation come into the House, there would never be public hearings on the legislation? That is the difference. There wouldn't be any of that level of accountability to the Legislature or the ability for the people of London to speak to their legislators about the proposed law.

Mr Hardeman: I would agree with you that it would not get to the Legislature.

Mr Cooke: Is that a view that you used to support when you were a part of AMO?

Mr Hardeman: The process is designed to be locally initiated—

Mr Cooke: It was locally initiated. Under this law London would be able to make the request.

Mr Hardeman: —and locally produced through the commission, and then it would be implemented on the recommendations of the commission.

Mr Cooke: By regulation.

Mr Hardeman: By regulation, yes.

Mr Cooke: Is there any money in the Ministry of Municipal Affairs for transitional costs for restructuring of local governments? I know under this you will actually charge the municipalities for the cost of the commission, but how many dollars have you put into the ministry for transitional costs?

Mr Hardeman: I think you'll find that all ministries are working on a very tight budget and we have to recognize that's the reason we are in this dilemma. We don't have any money, and no, there is no extra money in the ministry budget to deal with the transitional costs.

Mr Cooke: Do you not agree that there are transitional costs associated with bringing together collective agreements, for smoothing out some of the changes in the tax base over a period of time so that there can be some assistance with that transition, and that one of the major difficulties, unless the government simply imposes restructuring, which I think is the real agenda under this bill, is that there will be no assistance or there will be no

restructuring that will occur at the local level because it can't be done without transitional dollars?

Mr Hardeman: I think there's a lot of restructuring that can take place without a lot of extra dollars. I think it's also important to recognize that restructuring should not be done for the sake of restructuring at great cost to the local ratepayers.

Mr Cooke: At the end of the day there are savings.

Mr Hardeman: At the end of the day, there should be a cost saving for the municipality doing it—

Mr Cooke: At the end of the day there is.

Mr Hardeman: —and I think they can deal with that.

Mr Cooke: Could you or Doug from the ministry tell us where the last major county restructuring took place where there weren't transitional dollars made available?

Mr Hardeman: I don't suppose, in fairness, there have been any major county restructurings to date taking place that did not have some transitional funds made available.

Mr Cooke: Okay. So that's going to be a major problem.

Mr Hardeman: I do want to point out that the last amalgamation of two municipalities took very little transitional funding. That was in Elgin county and it was done by a—

Mr Cooke: That's a minor restructuring.

Mr Hardeman: —done by a local initiative, and I think they can be done that way in a lot of other areas.

Mr Cooke: Very quickly, just to jump for a second to freedom of information, because I think there are some changes to the municipal freedom of information rules and laws, can you just outline for me the level of problem that existed across the province of abuse of freedom of information in order to bring in the changes that you're now bringing in that will vastly and significantly restrict access to information?

Mr Hardeman: I can't tell you on a total global budget how much money has been spent on freedom of information by municipalities over the last two years, if that's the figure you're looking for. I can tell you that it has been brought to our attention in a number of cases that individual municipalities have spent considerable sums of money to deal with requests that at the end of the day they deemed very inappropriate and it was a lot of taxpayers' dollars going for that purpose.

Mr Cooke: Could we maybe ask the ministry to supply some information to us, hopefully before we get to that section, on the levels, because what's been provided to the committee so far as we travel the province is that it was primarily a couple of individuals who were abusing the process, irritating police forces, police boards and municipalities. I guess I'd like to get a better idea, before we pass this major amendment, of what the analysis is that has been done by the Ministry of Municipal Affairs and Housing, because there has got to be analysis.

One other piece of information I would like from the ministry, because I know this is always done when you're deciding the levels of transfer payments, could the ministry provide for us the impact analysis that the ministry would have done before the cabinet made the decision on transfer payments? So the impact statement, layoffs at

municipalities, programs that will be closed, there's always work done on that. So I think that would be helpful to the committee to table that.

Mr Phillips: I know we would find it useful to have that legal opinion before we finally deal with the bill in terms of the licensing provisions. I think what we'd like to know, we've had two presentations, one from the city of Kingston and one from the Ontario Restaurant Association, one asked would the bill permit the establishment of a fee that could be, for example, tied to percentage of gross sales, and the city of Kingston I think indicated that they interpreted it could be for a service station a cent per litre for gasoline or \$1 per night for occupied rooms for hotels, or \$1 per litre for alcoholic beverages for actually the Brewers Retail and Liquor Control Board. Could we get a legal opinion on whether the licensing provisions in this bill permit that?

I don't have to have it now, but I don't mind it in written form before we have to deal with the bill finally.

Mr Hardeman: We don't have it now and I'm not sure it's a legal opinion, but it is an opinion from the ministry.

Mr Phillips: From the minister?

Mr Hardeman: From the ministry, clarification of the issue.

Mr Phillips: Okay. I wouldn't mind the legal opinion too.

The Chair: We now move to clause-by-clause analysis of the bill. In the absence of any other direction from the committee, obviously we begin at the beginning and we go to the end. In view of the fact that the majority of this bill is made up of the various schedules, is there any direction other than standard procedure that the committee is interested in or do we start with section 1 of the bill or do we start with the schedules?

Mr Clement: I'd like to suggest, since section 1 and the subsequent sections deal with the entire act, it would make sense to me to start with the schedules first, deal with those clause-by-clause, and then come back to the all-encompassing sections which are found at the beginning of the bill.

The Chair: Does anybody else have a thought on that?

Mr Phillips: I would've thought we'd do what I thought was kind of the obvious and start from the front and go to the back, which avoids anybody arguing, "Well, I want to deal with my section." "I want to deal with my section." And so I kind of assumed that was going to be the process. Maybe somebody has an argument why we wouldn't follow that.

Ms Lankin: We could spend the next few days on health.

Mr Clement: No, I'm saying start with schedule A. But schedule A is not the first section of the bill.

My suggestion is start with the schedules and come back to the all-encompassing sections.

Mr Phillips: Only because my instinct is to deal with the all-encompassing section just because some of them tend to impact on all parts of the bill. That's what I kind of thought.

Mr Clement: Keeping the great rhetorical footage at the end rather than at the beginning.

Mr Cooke: We may never get to the end.

The Chair: So I gather that we will start at the beginning and go to the end.

Mr Phillips: The public must really wonder about that.

The Chair: A pretty profound statement from the Chair at a quarter after 5.

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We'll deal with the first section on page 2. Are there any amendments to the first section?

Mr Silipo: If you could direct me as to whether this is where this would fit, but when are we dealing with the title of the bill?

The Chair: We deal with it last.

Mr Silipo: We deal with it last?

The Chair: Right.

Mr Silipo: Okay.

The Chair: We deal with the short title in this particular section and we deal with the long title of the bill last.

Mr Phillips: That's normally done, is it? We always deal with the title at the end?

The Chair: Yes. The title comes last.

Mr Silipo: So we're on subsection 1(1)?

The Chair: So we're on subsection 1(1), or section 1 basically to start with. Are there any amendments to section 1?

Mr Silipo: Yes. I move that subsection 1(1) of the bill be struck out and the following substituted:

"Enactment of schedules

"1(1) All of the schedules to this act, other than schedules A, D, F, G, H, I, J, K, L, M, N, O, P and Q, are hereby enacted."

The Chair: Mr Silipo has moved an amendment to subsection 1(1) of the bill. Is there any discussion on the amendment?

Mr Silipo: Mr Chair, I would just simply make the point that this would allow the sections that we believe are not controversial, particularly schedules B, C and E, to proceed. There are others that we believe need amendments and we've heard all of the problems with respect to all of the other sections. I'm not going to get into them at this point because that would take probably the next hour of the committee, so we'll just move that amendment.

Mr Cooke: I think what both opposition parties and many members of the public have said for the last several weeks very clearly is that we need to look at what can proceed and what needs to have further discussion. We've put forward a proposal that would allow some sections of the bill to go ahead and would provide a mechanism to allow the government and the opposition, the Legislature, to have further study and, I would hope, more public discussion about the legislation.

There has been overwhelming criticism about the process, both in terms of the ability for the public to understand the legislation, to be part of developing a strategy, but more important than any of that is to be part of the process to look at the future of this province because I think more than anything this legislation, as the Tories have been quite proud to say, will as it's implemented change the face of this province. I think that we need to be taking a look at an ability to allow certain parts of the bill to move forward—we all agree with that—but to also have further discussion and to have

more public participation. The people of this province have that right and I think this amendment does that.

This out of all of the amendments reflects the public input that we've had and to reject this one means that the Conservatives are in fact rejecting the most fundamental presentation of all that have been made by 80% of the groups that have come forward.

Mr Clement: I will speak against the amendment. I understand why Mr Silipo would like to proceed with schedules B, C and E, but the fact of the matter is this legislation must and should be treated as a whole. It is not just particular portions of this that deal with the fiscal realities. It is all portions of this legislation that provide the context through which we must as a province and as a society proceed.

It is not just a question of fiscal realities as well, if I may say so, Mr Chairman. Those on the health side know that I've made this point before; namely, that this is also about restructuring our health care system so that it can do its job for the citizens of this province, for everyone in this province. It means dealing with the portions of the health care system which are not working well or are misallocating resources or allow for fraud or inefficiency to take place and dealing with those in a forthright, upfront manner rather than allowing the status quo to proceed where things are decided, hospital beds are closed, long-term care is not looked after, and ultimately it's the patient and it's the person in Ontario who pays, but there's no mechanism by which we as a province can deal with these issues.

So to me, it's wider than just a fiscal issue. To me, it's also a matter of restructuring our health care system so that it does its job, not only from a taxpayer point of view, although that is terribly important, but also from the point of view of all of us who at some time or another, either in the past, present or future, are going to be patients and recipients of health care in this system.

Similarly for the municipalities, there is a need for the municipalities—and they have said this time and again—to grapple with the changes that are occurring in our society and the changes in terms of their revenue generation and in terms of their expenditures.

We cannot stand idly by and allow those decisions to be occurring by default. I think that is the worst form of government, where things happen through muddling through, through burying your head in the sand. We've had governments like that. Perhaps we should all, as citizens in this province, take ownership that we have all been part of this problem, because we have allowed ourselves to bury our heads in the sand.

The time has now come where the people in the province of Ontario are demanding answers, and we heard this through our deputations as well, if I may say so. There have been deputations, Mr Silipo is quite correct, who said, "Split the bill up," or "Let's go easy on this," or "Let's go very, very slowly on this, because they're important issues." Yes, they're important issues, but there are also people who have made it clear to this committee that the price of not proceeding with alacrity is a very high price indeed.

Mrs Caplan: This has nothing to do with it.

Mr Clement: The price of having a \$10-billion deficit every year is a price on our health care system. It's a price on our health care system; it's a price on our municipalities.

To me, what I derived from some—not all—of the deputations was, they want somebody to act. They're looking at the Legislature for leadership. They're looking to the government for the ability to get the job done so that we can start restructuring and finding the savings where they need to be found and reapplying those where there's a consensus that they should be applied.

For those reasons, I must speak against the motion. This bill is a whole. This is a strategic whole for this government—

Mr Cooke: It's a hole?

Mr Clement: —whole with a w—to deal with the issues that have to be dealt with and that, quite frankly, people are demanding. They are demanding that we behave responsibly and they are demanding that we, as legislators, finally, after all is said and done, after 750 presentations, after 11 cities, we, as legislators, finally legislate. So I must speak against the motion.

Mrs Papatello: With respect, to speak to this motion, I must say that in terms of dealing with this bill as a whole, I think Mr Clement will admit that even in the limited hearings we had publicly across Ontario, even the hearings couldn't deal with the bill as a whole. It had to be split in two so that you had health and non-health. That was very limited, but even that was a recognition on the government's part that you could not deal with this bill as a whole. Moreover, every community we went to, you had about 400% of the presenters not presenting, so a very limited one quarter of those who would have liked to actually managed to present.

From the very beginning, this government compared, I guess, previous governments and opposition parties as wanting to support the status quo. Another thing I think those who really have listened all of this time will understand is that not a one of us agrees that the status quo should be maintained. Every one of us is in favour of making good change. That means doing that responsibly, and when you try to effect the bill as a whole, in fact you would be irresponsible.

I think the government members had to realize, and have, in terms of how they've been forced by us to deal with this, unlike what they would have done without us, and that is, ramming it through before Christmas—all of that speaks to the fact that the motion, as has been presented so far, should be passed.

Mrs Caplan: I guess the thing that I'm most concerned about is that the government just doesn't seem to be listening. One of the things we've heard from them is, "We consulted," yet when I asked research to do a review of a number of groups that said they had been consulted compared to the number of groups that had not been consulted, overwhelmingly—overwhelmingly—the number of presenters who said: "We have not been consulted. If we were consulted, we could help you draft better legislation. Go slow"—even those who supported the bill said: "Split it up so that we can consider it thoughtfully. There are parts of it that you're rushing through that are going to

result in just simply bad legislation, bad law, and most importantly bad policy."

When I listen to what the government members say, I am convinced they haven't heard anything. They haven't heard what people have said to them. So, Mr Chairman, the most significant thing that I think we can do today is to accept amendments that will say to the government, "Split this bill into manageable pieces and let's look at it thoughtfully so that we end up with good law."

1720

I was elected to do the best that I could to advocate for good lawmaking. We are legislators. We are lawmakers. We share many of the same goals. This bill does not achieve those goals of good law, of good lawmaking, because it has had a bad process. So I appeal to the government members to think about that, to accept these amendments which are technical in nature and will allow for proper scrutiny and better lawmaking.

The Chair: Any further discussion? All those in favour of Mr Silipo's motion? Opposed? The motion is defeated.

Any additional amendments to section 1?

Mr Phillips: Mr Chair, we have several amendments here. The paperwork is getting so thick, I'm not sure whether everyone has all the amendments or not. We had a Liberal motion on section 1 of the bill that, because it was very similar to the motion we just dealt with with Mr Cooke, I'm going to, in the interest of trying to make sure we get through as much of this bill as we can, withdraw and move on to our second amendment.

Mr Sampson: Mr Chair, on a point of order, if I may: I don't have copies of the Liberal amendments. I don't know if there's any other committee member who does, apart from Mr Phillips, at this point in time. I've not been delivered a copy of the Liberal amendments.

Mr Cooke: They've been handed out by the clerk.

Mr Gerretsen: They've been handed out by the clerk. Now you know how we feel most of the time.

Mr Phillips: I think it's unfair that the committee's kept Mr Sampson in the dark. I, for one—

Interjections.

Mr Sampson: I have the NDP motions. The package that was in the infamous rubber band, I have. But this is the one I don't have.

The Chair: Now you have it.

Mr Phillips: Should we wait a minute or two till Mr Sampson finds his amendments?

Mr Sampson: Can we adjourn for five minutes while I have a chance to flip through the amendments, let alone find them?

Mr Phillips: I plan to read them and maybe I'll read slowly for you.

Mr Sampson: That's fine.

Mr Phillips: Is that all right?

Mr Sampson: Go ahead.

Mr Phillips: I'm dealing now with our motion, section 1.1 of the bill.

I move that the bill be amended by adding the following section:

"Biannual report," if everyone's on that one.

The Chair: Excuse me for a second. What you're introducing is a new section, 1.1, I believe.

Mr Phillips: That's right.

The Chair: So basically we should vote on section 1, because there are no further amendments to section 1. You are adding a new section now, 1.1, so we'll deal with section 1.

Shall section 1 carry? All those in favour of section 1 being carried? All those opposed? Section 1 is carried.

Okay, now, Mr Phillips.

Mr Phillips: Section 1.1 of the bill: I move that the bill be amended by adding the following section:

"Biannual report

"1.1 (1) Every six months, beginning with July, 1996, the Minister of Finance shall table a report with the assembly setting out the actions the government has taken in the preceding calendar year in exercising powers granted to it under this act including, without limiting the generality of the foregoing,

"(a) actions by the Minister of Health under the Public Hospitals Act to issue directions, to appoint a supervisor and to review human resource plans;

"(b) actions by the Minister of Health to revoke or rescind a private hospital licence or to reduce financial assistance to a private hospital without notice, the right to a hearing or appeal or any other legal remedy;

"(c) actions by the Minister of Health to limit the circulation of a request for a licence for an independent health facility;

"(d) consideration by the Lieutenant Governor in Council of the price of a drug as a factor in deciding not to list it under the Ontario Drug Benefit Act;"

"(e) actions of the Minister of Municipal Affairs and Housing or a municipal restructuring commission which, while defined by regulation, can prevail over any act or regulation;

"(f) action by the Minister of Municipal Affairs and Housing to exempt a business or a class of businesses from municipal licensing provisions;

"(g) limiting the need for permits with regard to carrying on logging, mining exploration, an industrial operation, construction, clearing, dredging or filling shore land on crown land, building dams and outdoor fires and travel in fire zones; and

"(h) the financing of wildlife and natural resources management in the wake of dedicating relevant fines, fees and royalties to these items.

"Public hearings and debate

"(2) The assembly shall refer any report tabled under this section to a standing committee, where at least three weeks of public hearings shall be scheduled to consider it and time shall be set aside in the assembly for debate of the report."

If I might speak briefly to it, Mr Chair.

The Chair: Yes, Mr Phillips.

Mr Phillips: The intent of this is, frankly I think even the government may acknowledge, we are moving very quickly on a wide range of fronts and all of us may not be aware of the total implications of what we're doing. The government may deny that, but I think certainly on our side we think this bill is heading into some uncharted waters, the consequences of which many of us can't foresee.

So the purpose of this is to put in the bill a mechanism that ensures there is a review of what happened as a result of the bill and an opportunity for the Legislature to review that. We tried to anticipate what we think may be some of the major areas, but it says "without limiting the generality of the foregoing." In other words, there may be other things that should be in this report as well.

I think it's wise to put in here a review mechanism for the Legislature and it may actually be useful for the government to calm people down mildly to say, "In six months there's going to be a public review of this and an opportunity for you to see many of the implications of what's happened as a result of the bill." So that's the purpose.

Mr Silipo: I speak in favour of this. I just point out that it's a fairly mild but I think useful process that would allow people to take a look at what's happened, as a result of the passage of this bill, six months from now. It seems to us to be something that even the government members ought to be able to approve.

The Chair: I wasn't used to such a short comment. I almost fell asleep.

Mrs Caplan: I'd like to speak very briefly to this. In fact, I think this is a very useful provision and I'm hoping that the government will support it. Given the unprecedented nature of this bill and the broad powers that it gives to the minister and to cabinet, if you're going to have the opportunity to just let the Legislature know how it's going, how you're doing, in fact it would be a way of gathering support if it's working, and if it's not working, conversely it will hold true that by letting people know what's happening, it would be an opportunity to say, "Look, it wasn't working; we're proposing certain changes," or "We've done it."

I believe this is a useful amendment both for the government and for ourselves as legislators who want to be able to know how this is working in its implementation and how the government, through regulation, is making changes that this bill will allow behind closed doors. By having some transparency I think we would all be well served. So I hope the government will support this, because it really is a democratic amendment that is not meant in any way to be adversarial or confrontational or even in any way a criticism, but it's an opportunity for us to see the government be a little accountable, given these massive and unprecedented, sweeping powers that they're taking unto themselves.

1730

Mr Cooke: I think that this is a very interesting amendment and is one of those amendments that appeals to those of us who believe in democracy, and also I think should appeal to the Conservatives as well. The reason I say that is that you hear a lot of criticism from the right wing that governments do things without any accountability, that no one measures whether the actions that a government is taking are working and how often they're used and all of those types of things. This would actually allow the progress of this bill, the success of this bill, the success of any actions the government takes under this bill, to be measured and to be debated.

So if there are problems that the government has with the time lines, I'm sure the Liberals would be willing to

take a look at any changes, whether six months is appropriate or whether another time line is appropriate, but I can't see how the Conservatives could oppose this one. This just makes government accountable and brings a business approach to government.

Mr Clement: Despite Mr Cooke's challenge, I feel I must oppose the amendment for the following reasons. I think we all agree on the ends; it's a question of means. I agree with the mover and the speakers that public accountability is absolutely critical to this whole process of government and governing. The issue is how best to do that. I would bring members' attention to the fact that there are a number of public accountability mechanisms already in place which deal with a number of the aspects that the mover is concerned about.

For instance, we have budget hearings and pre-budget hearings which travel around the province by committee, allowing members of the public as well as other groups—

Ms Lankin: They don't travel.

Mr Clement: Sorry, I misspeak myself, but they are available to the public and allow members of the public as well as various stakeholders to have their say as to what the financial priorities of the government of the day are.

We have the Premier's accessibility, typically through either the media year-enders or throughout the process, where the Premier is held to accountability for the actions of his or her government. We have, on occasion, the speech from the throne, which proceeds to communicate to the public what the priorities of the government are and how best to deal with those priorities.

We have within the legislation itself, in schedule F, a review procedure for some of the more, as they have been termed, "extraordinary" powers of the Minister of Health. By "extraordinary," I mean powers which will be used only sparingly, rather than "out of the ordinary" in another sense; for instance, the sunset clause that is on the hospital restructuring commission or section 6 powers that the Minister of Health purports to exercise.

Finally, we have public accountability through question period. I'm sure members of the government would attest to the fact that they have been definitely accountable for their actions and, in some cases, missteps that they have publicly acknowledged, and that's all part of the process.

So I think that public accountability is important and I think that we have a system of public accountability in place which meets the concerns of the mover.

Ms Lankin: I have to say that was the most astonishing display of doublespeak I have ever heard from the Conservative party whose leader, now our Premier, Mike Harris, stood day after day in the Legislature and insisted on reports being tabled in the Legislature, insisted on issues being referred to standing committees, insisted on public hearings being held on various issues, who told us day after day that the accountability measures that were already in place and being acted upon in the Legislature of Ontario were not sufficient to provide the kind of accountability that he, as Premier, would provide under the Common Sense Revolution to the people of Ontario.

To hear now the weak defence put forward that, "All is well in the province of Ontario and that all the procedures we have always had work perfectly and that even

though we are taking extraordinary, unprecedented powers on to ourselves to make decisions behind closed doors, which is entirely opposite to what we said we would do during the campaign and during our two years of travelling around with the Common Sense Revolution, despite that, we're also going to say that we are opposed to a simple amendment which would have accountability measures of tabling reports after the fact of how these unprecedented powers are used and allowing that referral to a public committee to monitor the progress of the government with respect to the implementation of powers, new powers, never-before-held powers in the history of the province of Ontario, to monitor how those powers are being used and the effectiveness of it, so that the Legislature in fact does have some mechanism of accountability, even if it is after the fact, and so that there is an opportunity for that to be reviewed in an open public way as opposed to simply regulation-making powers being done and exercised behind closed doors."

I find it extraordinary that you could marshal the wherewithal to argue against a process which seems to me to have been at the cornerstone of everything you've publicly proclaimed as a party over the last couple of years in terms of your beliefs about accountability. How quickly we change.

Mr Cooke: I guess I—and Mr Sampson is gone.

Interjection: Here he is; he's back.

Mr Cooke: I wanted to ask him a question, because I'm not quite sure what the roles are. Mr Sampson, I think, has got major carriage of the bill. Mr Clement is, I don't know, major spokesperson.

Mr Sampson, you had indicated a few minutes ago that you hadn't had a chance to look at the amendments because you hadn't been given them. Is this a particular amendment that you would be prepared to stand down till tomorrow while you have a chance to review it? Because quite frankly, if you can't accept this amendment, I think we're heading in a direction that there are no amendments from the opposition parties that you're going to be accepting over the next four days. You're just going to approve all of yours, except for the ones that are out of order, and we might as well at least tell everybody who's watching this: "Read the Tory amendments. That's what the final bill will look like. You can see what we've moved and they're all going to be rejected. We might as well pack it in if that's the game plan of the government." This amendment just makes sense. What's your problem with it?

Mr Sampson: Mr Chair, I would like to have had the same opportunity that we provided the other members to review their amendments. As I said, I literally just got them when they were handed to me 10 minutes ago, with respect to the Liberal amendments. I have not had a chance to go through any of these amendments. We'll be taking a look at them if we continue on till 6 o'clock, taking a look at them, minute by minute, as they are raised.

Mr Phillips: Just on a point of order, Mr Chair: When were these distributed?

Interjections: This morning.

Mr Phillips: He said he wanted the same courtesy. You got the same courtesy. They were distributed this

morning. So I would appreciate it if you'd withdraw that comment.

Mr Sampson: Come on, I'm not going to withdraw that comment, because I was literally given these 10 minutes ago. You saw the act of them being given to me.

Mr Phillips: Excuse me, but your caucus was given them this morning.

Mr Sampson: I'm just telling you what the fact is. The fact is that this is the first time I've seen these amendments, the Liberal amendments.

Mr Phillips: Don't blame the Liberals.

Mr Sampson: I'm just telling you what the fact is. If you wanted due consideration of these amendments—

Mrs Caplan: The way it works is, it gets filed with the clerk, the clerk distributes it to everybody. To suggest that you were not given any courtesy is an affront to the clerk; certainly not to us. We tabled them appropriately this morning. Your caucus got it. We didn't single you out not to get it. I think the clerk gave it to you and perhaps it's been sitting there and you just didn't see it. Let's be fair about this. It's going to be a very long and frustrating week if the attitude that you've just displayed in the last couple of minutes is going to prevail.

Mr Sampson: I'm not displaying any attitude, Mr Chair. I'm just telling you the facts. The facts are that I personally just got these amendments when they were handed to me. That is the fact.

Mr Phillips: Excuse me. I must interrupt, Mr Chair, on a point of privilege. You said in your remarks: "I would appreciate the same consideration from the Liberals that I gave them. I only got this 10 minutes ago." That is not true. You only found them 10 minutes ago. You got them this morning. The reason I raise this is that you create a climate in the room that is not helpful. We tabled them this morning; you got them this morning. I can't help it, we can't help it if your filing system isn't working or you can't read through these or no one points out that under that little pile of paper there you have the Liberal amendments. All your colleagues have them. You got them early this morning. So I would appreciate if what you'd said was, "I'm sorry. I didn't notice I had these amendments that I had this morning. I have not had a chance to read them," not, "I wish they would give me the same courtesy that I give them," because you got the courtesy, getting them this morning.

1740

The Chair: Obviously, we could argue all day about this. When were they received?

Mr Clement: It's all a blur, Mr Chairman.

Mrs Caplan: Why don't you ask the clerk?

The Chair: Okay. The amendments were handed out this morning. I don't know what caused the confusion that Mr Sampson didn't get them, because we saw him get them. Anyway, they were handed out this morning.

Interjections.

The Chair: I don't know that it really is worth an awful lot of our energies. Mr Cooke, you were asking a question of Mr Sampson.

Mr Cooke: I'd ask Mr Sampson, would it be of any assistance to stand down the amendment? Or, since you are going to be the major decision-maker on how the Conservative caucus proceeds in the next four days, is

there a logic that we adjourn the committee now at quarter to 6, give the parliamentary assistant the opportunity to go through all the amendments, and we proceed tomorrow? Or are they just going to be defeated tomorrow?

Mr Sampson: I think the right route would be to give us all on this side and perhaps all the committee, because I don't know whether the NDP has seen the Liberal amendments and the Liberals have seen the NDP amendments—

Interjections.

Mr Sampson: —but give all the committee members a chance to consider these amendments and whether there's any validity to them, otherwise there's a strong chance we would be standing them all down until we have a chance to consider them.

The Chair: Are you making a motion, Mr Cooke, that we adjourn till tomorrow?

Ms Lankin: But I thought you were prepared to proceed this morning.

Mr Sampson: We are. I'm just telling you, how can I proceed on amendments I didn't get? We're back to the same argument again.

Ms Lankin: Then how could we have started this morning, Mr Sampson?

The Chair: Mr Cooke, are you making a motion?

Mr Cooke: I'm asking Mr Sampson a question. With the 15 minutes, does he want us to adjourn now and we'll come back and start clause-by-clause in more detail tomorrow so we will get due consideration of the amendments, or is it going to be the same result? Has this amendment got a chance of carrying? Is there any logic to it?

Mr Clement: We're standing this one down so—

The Chair: Mr Clement, the question was asked of Mr Sampson.

Mr Sampson: I would suggest that we stand this one down. Yes, that would be appropriate, and we'll continue with the next amendment.

Mr Cooke: So we come back to this first thing tomorrow morning?

The Chair: Do we have unanimous consent to stand this amendment down? Agreed.

There was another new proposed section 1.1.

Mr Silipo: I move that the bill be amended by adding the following section:

“Application of Environmental Bill of Rights, 1993

“1.1. Despite subsection 15.4(2) of Ontario Regulation 73/94, section 15 of the Environmental Bill of Rights, 1993, applies in respect of this bill and all of its schedules.”

The Chair: Mr Silipo, do you want to speak to the motion?

Mr Silipo: Before I speak to this, I don't want to push the point, but—

Mr Sampson: I've seen it.

Mr Silipo: Mr Sampson has seen this one? Okay. Do you want to us to proceed with this one now?

Mr Sampson: Go right ahead, Mr Silipo.

The Chair: Mr Silipo, the floor is yours.

Mr Silipo: Then let me say that it's maybe a little-known fact that on the same day the government intro-

duced this legislation, it also passed a regulation exempting this bill and, more particularly, exempting the whole Ministry of Finance from the application of the Environmental Bill of Rights. That, we believe, is wrongheaded, because it doesn't allow for the safeguards in the Environmental Bill of Rights to be applied to this legislation.

We certainly heard through the hearings a number of concerns as they relate to things, for example, like the closure of mines, as they relate to some of the changes that affect conservation lands, and the potential and likely sale of some of those lands as they relate to the game and fish lands and rivers act.

We also know that the Environmental Commissioner, who's an independent officer of the Legislature, took the unprecedented action of issuing of a special report to the Legislature in which he condemned the government's actions of exempting itself and exempting this bill and the Ministry of Finance from the application of the Environmental Bill of Rights.

For all those reasons, we believe it would be appropriate to put this piece of legislation to the same test that all other pieces of legislation are subject to: the provisions and the safeguards provided for in the Environmental Bill of Rights.

Mr Phillips: I want to speak in support of the motion. I think it's fair to say, and I hope members on all sides will agree, that a part of this bill that has not had the consideration it should is the impact on the environment. We began to hear towards the end of our hearings from groups involved with the environment. We heard Friday night a fine presentation from an individual who spoke about the concerns for the environment. But it was only towards the latter part of the hearings that the people who monitor for Ontario the environmental impact of bills began to be aware of the impact.

I happen to think the combination of some of the things happening in the Mining Act, the Fish and Game Act, the conservation authorities, coupled with the government's decision—three things happened November 29. Everybody was aware of two of them, the financial statement and the omnibus bill, but that same day the government exempted itself from many provisions in the Environmental Bill of Rights. I think that's a mistake, because it is going to have an impact on the environment that we simply do not have a handle on.

The amendment makes sense and I think will give some assurances to the environmental concerns around the bill, that this isn't going to be an major—“disaster” is too strong a word, but a major problem for the environment. We'll be supporting the amendment.

Mr Clement: As we all know, government has a balancing role to play as both the custodian, in the first instance, of our environmental heritage and as custodian of an economy that we are charged with assisting the private sector in working well. I think this bill does strike that proper balance. I don't see any deferral of any safeguards. In fact, Mr Sampson quite eloquently earlier this afternoon mentioned the improvements to the Mining Act, how that would improve the environment through the use of inspectors. I see this as a proper balance as it now stands and would speak against the amendment.

Ms Lankin: I want to underscore for everyone interested in this particular issue that much like the privacy commissioner, who is an independent officer of the Legislature, who was very critical of the government's actions with respect to privacy of health information records and other changes contained in Bill 26 to freedom of information and privacy protection legislation in this province, the Environmental Commissioner, who is also an independent officer of the Legislature, went so far as to hold a press conference to condemn the government's actions with respect to exempting itself under Bill 26 from aspects of the Environmental Bill of Rights.

I think it is not appropriate for us as legislators to make light of that kind of important advice and concern registered by an independent officer of the Legislature. To simply say that government has some overriding ability to balance these issues of the economy and the environment—in fact, that's exactly what the Environmental Bill of Rights sets out: a process for that balancing to take place, for the concerns of the environment to be publicly acknowledged and responded to by government, but every right to balance that. To exempt yourself is once again to move yourself into the realm of making decisions and taking actions behind closed doors without public scrutiny, in this case with respect to the environmental impacts of your decision.

Once again it seems to us that the whole way this government intends to operate is to be able to do things in a secret manner, in a manner that is not accountable. I would hope that when Mr Sampson has a chance to read the earlier amendment we have stood down, perhaps we will see a different approach from the government members tomorrow morning when we deal with that. This is another very good example of the very same issues at the heart of it: issues of accountability, of openness, of public scrutiny. I believe those are things that your government would profess to believe in, yet every action you take seems to run right in the face of that.

I speak very strongly in favour of this and very strongly in favour of taking the advice of the independent officer of the Legislature, the Environmental Commissioner, who has made her advice known publicly to all of us. I think it warrants at least listening to.

1750

The Chair: Any further discussion?

Shall the new section 1.1, as proposed by Mr Silipo, pass?

All those in favour?

Mr Cooke: Can we get a recorded vote on this, and on every amendment?

The Chair: Okay.

Ayes

Caplan, Gerretsen, Lankin, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The new section 1.1 is defeated.

I understand there's a new section 1.2.

Mr Phillips: I hope Mr Sampson's got this one.

Mr Sampson: They're all here.

Mr Phillips: Good. I feel better now.

I move that the bill be amended by adding the following section:

"Petition of members

"1.2(1) On the petition of 15 members of the assembly, any action authorized by provisions in this bill, including the passing of a regulation, may be referred to a committee of the assembly.

"Same

"(2) Where such a referral is made, the committee shall consider the matter, may hold public hearings and shall report back to the assembly."

This is in the same vein as the previous motion in the sense that the government should be looking for opportunities to provide reassurance to the public that they need not worry about this bill. We obviously think the public should be worried about the bill; we think it's got sweeping provisions for powers that no government should have. But if the government is looking for some things it can go out to the public with and say, "Don't worry too much," this is one of them, where if 15 members of the assembly want to, they can petition provisions in the bill and have an opportunity to look at it.

I clearly recall during the hearings the faith we all have in municipal politicians that they will not abuse the power. I don't think the Legislature would abuse this either. There's a self-correcting mechanism in the Legislature of making sure one doesn't step too far over the bounds. This is a good motion that assures the public that there's an opportunity for some review of possible abuse in the bill, and for the government, it's a good way to show you're at least considering some valves that will let off public steam. That's its purpose. As I say, it's not unlike the previous one, and I would hope the government would consider it.

Mrs Caplan: This is not new in the Legislature. Over the course of time I've been here, this was a provision we'd had in the past. When we've had different rule changes and different procedures, this was one of the things that, for a while, we tried to do without. In bringing it back, it's really something that many members felt worked quite well, and missed the opportunity. When there was an initiative by the government, for members of the Legislature of all parties who wanted to have an opportunity to examine it further, with the petition of 15 members they could do that. I'm hoping the government will see this as something which is helpful and friendly and would allow standing committees of the Legislature to review things that perhaps members of the government caucus might like to see studied from time to time as well.

Particularly as it relates to this bill, given the dramatic new powers it gives to the government, there will be concerns raised by some of the things done by regulation. This is a safety valve, it's reasonable, and I can't think of any reason the government would not permit this scrutiny by a legislative committee of the Legislature.

Mr Cooke: Again, you've got to put this amendment in the proper context; that is, when you consider that there are so many things under Bill 26, if it's passed in its current form, that used to require the assent of the

Legislature but are now going to require approval of cabinet only, all this does is allow the assembly to be involved occasionally with some exercise of this power.

I'll go back to municipal restructuring. If there were a major restructuring of a county government into a regional government, as this bill would allow—and would allow to happen without it ever having to come to the Legislature—this would simply allow the Legislature to take a look at it. It wouldn't be able to stop it, but at least to be involved in the process and get some feedback.

I don't think it's particularly radical. Quite frankly, I don't think it's particularly adequate. It doesn't do nearly enough to replace the powers the assembly is losing under Bill 26, but at least it provides a small amount of democracy in an otherwise very undemocratic bill.

Mr Maves: I would say that this has the potential to be abused and really just delay governing. Each time a minister puts forth a regulation, the opposition, in an effort to delay proceedings in governing, could use this section to do so. I think history shows that avenues like this that can be abused have been abused. We spent years

and years with standing orders, for instance, trying to get rid of tactics which simply tie up government and don't allow governments of the day to govern.

Already, there's nothing stopping members from recommending things to committees to be studied anyway. If I'm not mistaken, any member of a committee can ask that committee and the people on that committee to study something. That's already there.

Also, there's already some degree of public accountability in the bill, for instance, in restructuring, where public meetings are now required under the bill.

I think it has the potential for being abused, the potential to delay government being carried on by duly elected people. I would urge my fellow members to vote down this amendment.

The Chair: In view of the time, we'll have to continue the discussion tomorrow. We stand adjourned until tomorrow at 10 o'clock. Ms Lankin, you will be the first to be recognized.

The committee adjourned at 1757.

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*Maves, Bart (Niagara Falls PC)

*Pupatello, Sandra (Windsor-Sandwich L)

Sergio, Mario (Yorkview L)

Stewart, R. Gary (Peterborough PC)

*Tascona, Joseph N. (Simcoe Centre / -Centre PC)

Wood, Len (Cochrane North / -Nord ND)

*Young, Terence H. (Halton Centre / Centre PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Caplan, Elinor (Oriole L) for Mr Sergio

Clement, Tony (Brampton South / -Sud PC) for Mr Kells

Ecker, Janet (Durham West / -Ouest PC) for Mr Stewart

Gerretsen, John (Kingston and The Islands / Kingston et Les Îles L) for Mrs Pupatello

Johns, Helen (Huron PC) for Mr Danford

Lankin, Frances (Beaches-Woodbine ND) for Mr Marchese

Phillips, Gerry (Scarborough-Agincourt L) for Mr Grandmaître

Sampson, Rob (Mississauga West / -Ouest PC) for Mr Flaherty

Silipo, Tony (Dovercourt ND) for Mr Wood

Also taking part / Autre participants et participantes:

Colle, Mike (Oakwood L)

Cooke, David S. (Windsor-Riverside ND)

Curling, Alvin (Scarborough North / -Nord L)

Clerk / Greffière: Grannum, Tonia

Clerk pro tem/ Greffier par intérim: Decker, Todd

Staff / Personnel: Baldwin, Elizabeth, legislative counsel

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Official Report of Debates (Hansard)

Tuesday 23 January 1996

Journal des débats (Hansard)

Mardi 23 janvier 1996

**Standing committee on
general government**

**Comité permanent des
affaires gouvernementales**

Savings and Restructuring Act, 1995

Loi de 1995 sur les économies
et la restructuration



Chair: Jack Carroll
Clerk: Tonia Grannum

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENT

Tuesday 23 January 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Mardi 23 janvier 1996

The committee met at 1000 in room 151.

SAVINGS AND RESTRUCTURING ACT, 1995

LOI DE 1995 SUR LES ÉCONOMIES
ET LA RESTRUCTURATION

Consideration of Bill 26, An Act to achieve Fiscal Savings and to promote Economic Prosperity through Public Sector Restructuring, Streamlining and Efficiency and to implement other aspects of the Government's Economic Agenda / Projet de loi 26, Loi visant à réaliser des économies budgétaires et à favoriser la prospérité économique par la restructuration, la rationalisation et l'efficacité du secteur public et visant à mettre en oeuvre d'autres aspects du programme économique du gouvernement.

The Chair (Mr Jack Carroll): Good morning, everyone. Welcome back to our clause-by-clause analysis of Bill 26. When we left yesterday, we were partway through discussing a new proposed section 1.2 and Ms Lankin was about to have the floor. So, Ms Lankin, we will carry on from that point. The floor's yours.

Ms Frances Lankin (Beaches-Woodbine): Thank you very much, Mr Chair. Could I just ask your guidance on this? Yesterday afternoon, as you know, there was an amendment moved to section 1.1 of the bill and we had, I think, just arrived at the point of voting on it when there was some discussion and there was an agreement to stand that amendment down so that Mr Sampson, who had just received the Liberal amendments, would have an opportunity to review it.

Given the content of that and given that it also speaks to issues around accountability of government actions to the Legislature in a broader and more comprehensive way than the amendment we're actually dealing with, I'm wondering procedurally whether it would make sense to stand down the amendment on section 1.2 at this point in time and go back to that vote so that we are aware of whether or not that is carried before we actually deal with this amendment because of the similarity of the intent, if not the content.

The Chair: Is the committee ready to revisit the amendment that we stood down yesterday, the Liberal amendment to the new section 1.1?

Mr Bart Maves (Niagara Falls): Agreed.

The Chair: Does it make sense then to follow along with what Ms Lankin suggests, that we stand down the new 1.2 since it has some of the same content as 1.1?

Mr Tony Clement (Brampton South): Sure.

The Chair: Okay. We'll stand down 1.2 for the time being and return to the new section 1.1 proposed by the Liberals, which was stood down yesterday. In that case Mr Sampson would have the floor.

Mr Rob Sampson (Mississauga West): I find it a rather interesting proposed amendment. I do have now, having had a chance to read it, some concerns as it relates to the technical wording of the particular amendment because it refers to "the preceding calendar year in exercising," but it says that the first report is due July 1996, so there could not technically be a full calendar year in July 1996 since it will be the end of January before the bill receives, if it does receive, third reading on January 29.

I'd like to ask, Mr Phillips, if you could tell me, what is the intent of this particular—I believe you were the one who moved the amendment.

Mr Gerry Phillips (Scarborough-Agincourt): Yes. I appreciate the opportunity to go over it because some of the public aren't aware of what was moved yesterday. Let's just refresh our memory here. The government said this bill is absolutely fundamental to implementing their agenda. As a matter of fact, they put the gun to our heads and said, "This is so important, so important that this bill which we introduced on November 29"—I might add once again, when most of us were in a lockup and most of us did not have any idea you were tabling this bill. As a matter of fact, I suspect most of the government members had no idea. It was tabled at 3:30 when we were in a lockup until 4 o'clock. The government knew that, yet you tabled this bill and then you said, "We want this bill passed in two weeks with no debate."

Mr David S. Cooke (Windsor-Riverside): That was 14 days later than they wanted it.

Mr Phillips: As the member says, "14 days later than they wanted." It was November 29. You wanted this passed in two weeks. Why? Because you said it was absolutely crucial to the future of Ontario that this bill be passed. You went on to say that all of these sections of the bill are interrelated and that they all fit together in some kind of a pattern designed to implement your agenda. So we take you at your word, and that is that this bill is the centrepiece of the government's agenda. As a matter of fact, I remember the day that we finally forced some debate on this bill, when we arrived in the Legislature the next day there was some sign on the building about the amount of money per hour it was costing because you weren't implementing this bill.

If this bill is so important to you and if it's so essential to the future of Ontario and if it's the bill that you want to be evaluated on, surely you would agree to this motion, because the motion essentially says that each six months you provide the people of Ontario with a review of the progress of the bill. That's what it talks about, that's what it intends to do and that's the reason for the

motion. It is essentially every six months a report card from you people on the implementation of this bill.

We have real concerns about this bill. We think it's wrong. We think you are grabbing powers you have no right to. We think you are taking on to yourself sweeping authority and we think there have been a whole bunch of people ignored in this bill. The people in the environment have had no input into this bill. This was a little bill concocted, cooked up behind closed doors, by the Association of Municipalities of Ontario, by the government, with virtually no input from the rest of the people who were going to be impacted. It was this cosy little deal with a two-sided negotiating table designed to implement your agenda.

I will just say to you that there are thousands and thousands and thousands of people out there who find the bill objectionable, who don't like your agenda and who feel you should be accountable for the implications of this bill. So it's very clear why this motion is before us. It says every six months, beginning with July, six months from now, that the Minister of Finance—presumably this is his bill, although we've never seen the Minister of Finance ever before this committee, we've never seen the Minister of Finance prepared to sit and defend the bill, we've never seen the Minister of Finance give an explanation of why he has to gut the environmental provisions around the Mining Act and why he has to gut collective bargaining and why he has to take \$250 million of pension. He has never been prepared to defend that.

But we say every six months the government has an obligation to come before the people of Ontario and give us a report card on this bill. What you're going to try and say is, "We'll do that other places," but you say this bill is all one big package. That's what you're telling us. "It's all one big package." That's what you tell the people of Ontario. So surely you can have no objections to every six months giving us a report card on the progress. You say this is going to allow you to save billions and billions of dollars. Fine. Give us the report card. Give the people a report card so that we can understand where you are on this bill.

Yesterday when we moved this motion—that's the intent of it. If the government can fine-hone this, if you've got better language around this, fine. We're prepared to entertain it. You've got all the resources of the government behind you. We in the opposition have limited resources to prepare these things. We prepared it the best way we can. If you can improve it, improve it. But the essential element is this: Every six months the people of Ontario get a report card.

You've told us this is your big bill. We call it the bully bill; you call it something else. It's your big bill. So give us a report card on it every six months. We say in a calendar year every six months. Each year between six months you bring forward a report card. I think that's completely reasonable. If you try and slough it off and say, "We'll do it in some other committee," and, "You can do it this way and do it that way," then it's just more of the game you're playing with the people of Ontario, when you say this is all one big package but you're not prepared to give a report card on the one big package.

I hope you can appreciate the anger that we in the opposition feel because yesterday we began some what we thought were reasonable amendments, only to find it looks like it's the government intent to simply—as from the start, you're under marching orders from the ministers, who are sitting somewhere watching this but afraid to come over here and present themselves. You're under your marching orders to do what they've ordered you to do, and this motion, I think, Mr Chair, is a reasonable one around getting an honest report card from the government on the progress they are making on this, and I suspect in the end the government will agree to this.

The Chair: Ms Lankin, followed by Mr Cooke and Mr Clement.

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Ms Lankin: I actually appreciate, Mr Sampson, that you raised an issue around the technical wording and the relationship between every six months and the calendar year. I think that's the sort of thing that, if there was an interest or a willingness to proceed with this type of amendment, could be worked out. I think the Liberals have indicated a willingness to reword this, and we would certainly support any clarification that's helpful in that respect.

The point I would like to make is not so much the large political context of the opposition to the way in which this bill has been brought forward and the way it has been put together, but I feel very strongly that the bill sets out very new, sweeping powers for members of cabinet to make decisions on an ongoing basis through the implementation of regulation in a way that exceeds the norm of most legislation.

We've heard the government argue that they believe that was necessary, that these are extraordinary times and they need extraordinary measures. If that's the case, I think it is also appropriate for you to look at extraordinary levels of accountability. This type of an amendment might be something that we don't normally see in legislation, but similarly I would bring you back to your own arguments about the nature of the sweeping powers that ministers are taking on to themselves.

Many of the things that ministers will now do in the future under this legislation are things that would have been done through legislative change in the past. They are things that would have been brought before the Legislature for debate, for input, for public hearings, for the whole process that we know unfolds when the government has an intent to make major policy changes or take things in a new direction.

I've heard—let me say this—from government members, particularly on the sections related to health, which is the committee that I spent the last number of weeks on, that there is an intent to involve the public, there is an intent to proceed along the lines of consensus on health care reform that already exists. But that intent isn't written into the legislation.

What's in the legislation is essentially a blank cheque. I know the health committee members will remember a presentation by Michael Sobata in Thunder Bay where he said, "This is like the government is asking us for a blank cheque, but they're not telling us what the number is that they're going to write in."

I think that's a very apt articulation of this, because so many of the powers that are set out are just very stark statements of the ability to do something like establish a health restructuring commission, all the terms, the mandate, the powers, the limits on the powers, all of that to be done in regulation rather than in legislation.

Normally, I think you would all concede, that's the sort of thing you would want to have legislative debate and public input into and have the checks and balances set into legislation, and other things that flow from that would be in regulation. That's not the way this bill is constructed. I understand the arguments the government's put forward for that—I disagree, but I understand them—but therefore you bring upon yourselves a higher standard of accountability and a need to meet that.

I'll just fold in one point that I would have made to Mr Maves, if we do get back to 1.2. This doesn't delay government taking action. It doesn't slow things down. What it does is say, after the fact, that you need to be accountable, need to be prepared to explain it and prepared to have a legislative debate where members of the opposition, who have an important role to play in the parliamentary process and in the legislative process and in the safeguarding of the principles of accountability to the public, have an opportunity for scrutiny and for exposé and for comment on the actions of the government. As in certain circumstances committees may determine, so should the public.

If there are some problems technically with the wording and the time frame, I'm sure we can come to an accommodation on that, but the process set out is something—you have put yourselves above the normal process in many ways in terms of the powers cabinet takes on to itself in this legislation, so I think you must set yourselves above the process with respect to accountability and achieve a higher standard of accountability.

I would ask government members to contemplate it in that context. You're not giving up anything in terms of powers. You are not giving up anything in terms of the timing of your own agenda. What you are doing is admitting to a higher level of accountability, which I think is the very least you can do, given the construct of the bill as we have seen it.

The Chair: Mr Cooke.

Mr Cooke: I'll let Mr Clement go first to see where the government's coming from and then I'll jump in, rather than going twice.

Mr Clement: I spoke on this motion yesterday and I was thinking about it last night. I confess I actually watched it over again. I think my answer was incomplete in two ways so I want to take another run at how this should be approached.

Let me first say that I agree with the premise that Mr Phillips has raised, on the large level. That is to say, there is a need for much more accountability of government and governance in our system. I'm not laying blame anywhere; all three political parties have to do more to accomplish that goal. So I think the premise is correct.

But the way this motion seeks to remedy the fault I have some problems with, and I have problems with it on two broad fronts.

The first broad front is more or less what I mentioned yesterday, that there are mechanisms in the parliamentary tradition that allow for public accountability. Yesterday I mentioned the budget hearings, I mentioned the accessibility of the Premier and what happens if he or she isn't accessible, I mentioned the speech from the throne, I mentioned the daily question period, I mentioned the sunset provisions we had in the legislation. I neglected to mention but would mention at this time the opposition days that are accorded to the opposition, which allow them to set the agenda of the Legislature at certain points in our session, and I would also mention the role of the Auditor General, which is becoming a growing role, and quite necessarily so, of an independent assessment of government actions from a particular perspective. It is another brake in the system, as I see it.

There are also things that ministries should attempt to do. My personal view is that ministries should do a greater job at having some form of annual report on their activities, on how they are achieving the goals that have been set out for them in the throne speech or in the government's agenda. Perhaps that's something ministries would look at.

But having gone through all of that, Ms Lankin made a very good point yesterday on this: that that only takes you so far—if I can paraphrase you, Ms Lankin—it only takes you so far, and I confess that that may not necessarily be good enough either. There are other things that government and indeed all political parties must look at. We should continue to hold town hall meetings. It's no mythology, with respect to the Common Sense Revolution, to recall that countless town hall meetings went into the ideas of the Common Sense Revolution.

There are other what I would call extraparliamentary means to achieve that accountability, direct means rather than the parliamentary means of the give and take of the Legislature, in which all of us have a way to go, perhaps a long way to go, and all have a lot to learn on that.

My second problem with the motion is that this is another parliamentary means. I think we have to be a bit more creative and come up with other non-parliamentary, extraparliamentary means to get at this problem. Adding layer upon layer of so-called parliamentary accountability doesn't really get us accountable to the people who matter most: the electorate or, more broadly defined, the people of Ontario.

I would encourage Mr Phillips to continue to think of ideas that would be helpful in that regard. I don't think this motion really helps with the real accountability that we as government have to get at. That is why I'm uncomfortable supporting it. But I'm quite open and I think all governments should be open and all parliamentarians should be open to thinking of new ways in which we as a group of people, supposedly accountable, should be accountable in the future.

Mrs Elinor Caplan (Oriole): Frankly, I find the comments of Mr Clement more than strange. If you really are interested in accountability, this is the most reasonable way to do that. The difficulty that people are having with this bill is (1) its complex nature and (2) the fact that so much of it has to do with power in the hands of ministers and the cabinet as opposed to policy and its

implication. Therefore, a report to the Legislature on a regular basis of how those powers have been used is an important accountability for all members of the Legislature, but it's also an important accountability for the citizens of this province. The intention of this is not in any way to delay the government. This is not, as we would call it, a dilatory matter. It's not. It's an accountability issue.

1020

When I listened to the objections of Mr Clement and his entreaty, "We think we've got to find ways of being more accountable, so maybe hold a town hall meeting," well, I hold town hall meetings in my constituency and in my riding and few people come out. The truth is, if it's an issue of real importance to people, you might get 100 people out to a meeting, and that would be a good attendance. I represent 72,000 people. I think the attendance you've had at similar town hall meetings would be in that range of 100 or a couple of hundred people. Unless they are aware of a specific issue that affects them, people tend not to get involved. If they see something on the parliamentary channel that is of interest to them, we'll get some phone calls and some questions.

I think democracy is well served by people having more information and more accountability. If people are going to respect the democracy in which they live, if they're going to feel there's any hope that they can influence future decisions, they have to know what's going on.

All the methods that you have identified are not possible unless the information is put forward first. Given the unprecedented nature of the powers contained in this bill, it is reasonable that we have that information.

One part of this motion would do exactly what you've said you support, that is, that the assembly shall refer any report that is tabled under this section—reports from ministers and so on, reports from the government to the use of the powers of Bill 26—to a standing committee where there can be public hearings. If there is any better way of holding a town hall meeting, I think it's in a legislative committee, where people can come, can make representation; it's completely open; sometimes it's televised; it's open to the public not only from an individual riding but from any part of this province.

What this motion does is what I hope you believe in, and if the words you just uttered are true, I would expect you to support this motion. We have hundreds, I understand, thousands of people demonstrating on the front lawn of Queen's Park at this very minute. I think they're firefighters in particular, but others have come to join them because they are expressing their concern in a democratic way about the impact of Bill 26. I know this government sees them and anyone else who doesn't agree with them as simply a vested interest, and that is insulting to the thousands of people on the front lawn.

Mr Terence H. Young (Halton Centre): That's not true.

Mrs Caplan: A government member interjects and says, "That's not true," but in fact a piece of literature put out by the government said exactly that: vested interest—anybody who has an interest in this bill.

If you want to speak to the people, what better way than saying to the ministers, who will have enormous and new, unprecedented powers after Bill 26 is passed, "The one thing you have to do, Minister, is come into the Legislature every six months and tell us how you've used these powers." That might give some comfort to the hundreds of firefighters on the front lawn. That might give some comfort to the thousands of people who were turned away from these committees. Frankly, it doesn't give a lot of comfort, but it gives a little to know that there's some additional accountability built in. I don't see how you cannot support that.

Mr Cooke: I thought Mr Sampson yesterday was interested in the amendment. Maybe I could just ask a couple of questions of Mr Sampson, the PA, about what the government's view is of the amendment. Is there any ground on which the amendment could be amended that would make it acceptable: different time lines?

Mr Sampson: I think Mr Clement spoke to the issue with respect to the general concept of accountability. That is something this government campaigned on and I think needs to give some serious consideration to. But this particular amendment has more than just the one technical aspect. As you flip through to the (c)s and (d)s, it doesn't seem to follow through and make much sense. I would have thought, listening to the comments this morning, that the members of the committee would have been more interested in a depoliticized, if I can put it that way, review of the process which would have somebody who is paid by government to do that: the Auditor General.

I'm afraid I'm not going to be able to actually support this particular amendment. The concept, though, does make some sense and perhaps we need to work on that as we go through this bill. I'm a rookie here, but as I understand it, you can always revisit sections with the unanimous consent of the committee, and we may do that.

Mr Cooke: I'm very disappointed to hear the response from both Mr Clement and Mr Sampson. First of all, we don't have an Auditor General in Ontario; we have a Provincial Auditor. It's not his responsibility to be evaluating the implementation of a piece of legislation. He will take a look at how dollars are spent, whether they're spent appropriately, whether there's proper accounting, all of those, but it's not his job to make political judgements about whether your government is accomplishing what it says it's going to by this piece of legislation. Don't try to fool people by saying that an independent person, the Provincial Auditor, is going to be able to assess whether this bill has accomplished what the government has said it will. That's unfair. Quite frankly, it's very misleading to make that kind of statement.

Let's look at what this bill says it's going to do. Just take a look at the title.

"An Act to achieve Fiscal Savings": That should be fairly easy to report on and we'll get some feedback on that through the budgetary process. That should be fairly easy to report on and report every six months.

"...and to promote Economic Prosperity": You said yesterday that this bill is part of the job strategy of the government, so I would assume there'd be an opportunity

every six months to report on various sectors affected by this legislation and some jobs numbers, whether they're increasing or decreasing as a result of this grand strategy.

"...through Public Sector Restructuring": That's something that could be reported on. You can report on how many thousands of people in the public sector you've fired and how that's affected the unemployment rate and the prosperity of the province.

"...Streamlining and Efficiency and to implement other aspects of the Government's Economic Agenda": If this is the implementation of the Common Sense Revolution, and you've said many times that you believe in accountability, I really fail to understand what your hangup is on this amendment. When you reflect on it, you would probably have expected it to be in the original legislation, because I think it's more in line with the kind of rhetoric you always used when you were in opposition and that right-wingers have always promoted, that there should be that accountability. But when you put it in some perspective, I guess I can understand why you don't want to do it.

This bill has nothing to do with job creation. This bill has nothing to do with restructuring. What this bill has to do with is downsizing government, pulling back from the role of government from people. I've heard many times that it's not the people you represent who need government; it's ordinary people in this province who need government. Your whole philosophy of withdrawing the role of government hits ordinary people, so I can see why you wouldn't want to be held accountable for the impact, because we would see in really raw terms what this bill is doing to the province and it would be reported in a very objective way.

1030

I also can see why you wouldn't want to have any kind of real, independent analysis of the impact of this legislation, because when it comes to independent analysis, what did you do on this bill on the one person who's supposed to report on what the government does in the environmental area? You exempted the entire bill from the independent environmental auditor of government. You pulled this whole bill out of that entire process.

So don't give us, quite frankly, the BS that you're interested in accountability. You pulled the whole bill out of accountability when it comes to the environmental laws of this province. You've taken huge responsibilities away from the Legislature and away from the public and you've given it to cabinet and you've given it to individual cabinet ministers and you've taken away the one, long-standing tradition of accountability to the legislators of this province, accountability even to the Tory legislators who aren't in cabinet. So you're using all of the rhetoric and it just doesn't wash. Nobody really believes it.

I found it very interesting to see last night—Ms Caplan and I were on a CBC show—your Minister of Health would not come on. He would only be taped ahead of time. He didn't want to sit at a table with lowly opposition members. But one of the clips from him was, there was a very blunt question asked to him that: "Everything that you said when you were in opposition, you are now basically saying that the NDP on some of the things that

they were doing in health care were right on, even though we criticized it when we were in opposition. Why did you do that?" and he basically said: "Well, I didn't believe what I was saying when I was saying when I was in opposition. That's just the role of an opposition member. I didn't really believe it. It was all BS, and now that I am where I am, I'll do what I want."

It's about time that we bring some accountability, both for what was said in opposition and now what you're doing in government. It's no wonder there's cynicism in the province about the political process and politicians when they see Mr Wilson say what he said on CBC last night and they see the Tory members of the Legislature today saying, "We won't even build into the process a report to the public every six months." That's all it is, a report to the public to see what kind of progress has been made on the goals that you've set; a business-like approach to government business, accountability not only to the Legislature but to the whole province.

I'm going to finish by saying one other thing. I think that this amendment would be particularly helpful because I don't believe by the time we've finished with this legislation next Monday that any of us will even at that point fully understand all the implications of this bill and we need to see that reported every six months.

Yesterday we found out for the first time from the parliamentary assistant to the Minister of Municipal Affairs that if this legislation is passed as is, toll roads can be brought in by municipalities. Now, that has never been discussed here before and I think that at the very least we need some kind of a report because we need to know on an ongoing basis what the implications of this bill are for all of the people of this province. What you're saying to the people here today is, you don't want to be held accountable, you don't want them to understand. You want these bloody public hearings over with as quickly as possible. You're sick of listening to the public. You don't want the regulations reviewed. You don't want the implications of the bill reviewed. "Get the process over with. Let us govern. Let us downsize government and we'll get back to the people in four and a half years."

I think it's a shame that that's how you see your role already. You've only been elected for about seven months and that's how you see your role as MPPs already. It's a shame.

Mrs Janet Ecker (Durham West): I can appreciate the opposition's concern about accountability, but I would like to stress that there are many accountable mechanisms in this process: to the opposition, to the media, to our constituents on a daily basis, through question period on a daily basis where we stand up. Quite frankly, Mr Cooke, I would not classify these hearings as "bloody public hearings," as you said.

Mr Cooke: Oh, I'm not classifying them.

Mrs Ecker: I think they've been very useful and I think we've learned and received an awful lot of input from them.

You also made the comment that this act is about fiscal savings. Absolutely. That's why the auditor is there. That's one of the things the auditor talks about, how the money is handled.

You've talked about jobs. That's something that we do through the budget process. We hear people in the pre-budget hearings, as has been mentioned, and we bring forward a budget, which is an accountability mechanism to the public. It talks about jobs.

You've talked about the size and downsizing and what's happening with the public sector. Again, that is something that is frequently reported on through pre-budget consultations and through the budget and economic statements.

So I believe there are many accountability mechanisms there in the system now and I believe they will work appropriately, as they should.

Mr Tony Silipo (Dovercourt): Could I start, Mr Chair, with perhaps a question to Mr Sampson? I think he indicated when he spoke that he agreed with the intent of this but had some trouble with the wording. Is this the kind of situation where by standing this down for another day perhaps some acceptable wording might be found or is this simply the government saying, "Absolutely no"? Because if it's, "Absolutely no," then we'll proceed to a vote on this. If there's some chance that something can be found that the government members would find accountable, it would seem to me to make some sense to stand the amendment down and let some further thinking take place.

Mr Sampson: It's not my view that the surgery will make this particular amendment survive, so my suggestion is that we proceed with it. Should we be so inclined, we'll bring something back and ask the committee for unanimous consent to do so, to bring it forward and table it, since it would be an amendment that would need unanimous consent to be reintroduced.

Mr Silipo: I find that quite disconcerting, but I'll keep looking forward to seeing what comes out of the government members on this throughout the week. We heard Mr Clement talk to us about the existing provisions. He referred particularly to the Provincial Auditor. It's interesting to note that even when the Provincial Auditor has given some pretty clear examples of things that the government ought to be doing to increase accountability, such as the area of tax evasion, the government had to really be dragged into taking any small action, which at the end of the day was really only so far as reinstating some tax auditors the previous NDP government had put in place and they had stopped the hiring of.

But they clearly are ignoring the advice of the freedom of information commissioner with respect to this bill; they're clearly ignoring the advice of the Environmental Commissioner with respect to this bill. What we're saying and what I think this amendment from the Liberal caucus is saying is there needs to be a political accountability system. If this bill does all of the things, even half of the things that we have been hearing it does, it's incumbent upon the government to acknowledge that there ought to be some ongoing mechanism for them to be able to report back and for the Legislature as a whole to monitor the impact of this bill.

As Mr Cooke pointed out, even as late as yesterday, four days before final passage of this bill, we're hearing about new areas that are covered by this bill that none of us I think had thought before were going to be covered—

in terms of road tolls that can be charged by municipalities. Who knows what else is in this bill that we'll only discover as time goes on? I think it's incumbent upon the government to at least have the decency to say, "Yes, we're prepared to be accountable," not through the rhetoric, because the rhetoric any of us can use, but quite frankly through a process that says, "Yes, we're prepared to put the effects of this bill in front of the Parliament, in front of a committee and let there be some understanding and discussion as to what the impact will be."

Mrs Caplan: I'll be very brief. This is more for the information of the members of the government caucus. I'm aware, as is Mr Cooke, that it is the intention of the government to downsize the Provincial Auditor's office by some 20%. Before you vote to reject this amendment, you might want to stand it down and ask the Provincial Auditor whether or not, given the intention of the government to slash his office by 20%, he'll be able to undertake the kind of review that this amendment contemplates and that you have said you believe he will be able to do. Frankly, he's told us that he's able to continue to do the kind of work that he has been doing, that you have praised, only if the resources that he has remain intact. He's said that he thinks he can streamline, and he has over the past couple of years, I think by about a 5% reduction, but that if the government is intent next year on cutting his budget by 20%, he's not going to be able to even do the work that he's been doing to date. So ask him that question before you vote this down, if you really do care about accountability and if you believe the alternative to this is the Provincial Auditor.

1040

Mr John Gerretsen (Kingston and The Islands): I think we've had a lot of discussion, Mr Chairman, about the public accountability and the accountability of the Legislature with respect to this piece of legislation. I think we ought to take a look at the section, though, and see what's actually being contemplated here, rather than talking about it in general terms, which is important as well.

What this section is basically holding the Minister of Health accountable to in relation to the first four sections is to indicate to the general public once every six months under what circumstances the Minister of Health has appointed the supervisor, how often and under what circumstances he has revoked or rescinded a private hospital licence, under what consideration, for example, the Lieutenant Governor in Council has changed the prices of drugs etc.

It is not as if the kind of report that is being requested here is an all-encompassing report that would take an awful lot of extra work and additional time to prepare. What we're basically talking about here is to make the minister accountable in those areas where he will be given extreme regulatory powers to take some very drastic actions with respect to appointing a supervisor, with respect to taking funding away from private hospitals. We are not talking about his day-to-day activities under this bill. We're talking about the results of his actions. Surely the people of this province have a right to know once every six months how often and under what

circumstances the minister has utilized the powers that we're giving him under this act.

We can talk about town hall meetings, we can talk about public accountability in the large extent, and all that is important and it's all part of the process, but let's focus back on what's being asked here: simply, an accountability of the most extreme powers that the minister for the first time has been given.

Mr Phillips: Mr Chair, I wouldn't mind, if I might, because it's my motion, having a chance to speak last.

The Chair: Okay.

Mr Cooke: Mr Chair, I just wanted to make one point in addition to what Ms Caplan has said, and that is that in my recollection of when the Provincial Auditor spoke to the Board of Internal Economy, he also said that one of his major concerns is that with the downsizing of government there are fewer employees to keep an eye on how programs are actually being administered, so therefore, there's less accountability in the ministries. He's going to be downsized by 20%, so there's less accountability through the auditor.

I just want to make sure that the Conservative members of the committee understand that when they talk about all of the mechanisms that are in place now for accountability, they are systematically destroying those mechanisms for accountability and on a process that I would argue would not cost the government much at all, and if this amendment were to pass, it would not cost much at all to implement. The government is destroying this opportunity as well. So don't give us the argument that you're concerned and interested in accountability. You're not at all. You're systematically destroying every process that's already in place.

Instead, we get this nonsense from Mr Clement that the solution is to have town hall meetings and glossy annual reports from ministries. We've had annual reports from ministries when the Conservatives were in power in the past, and all they did was cost hundreds of thousands of dollars to publish and brag about what a great job the minister was doing in that particular ministry, written and produced on the most expensive glossy paper that they could find, with the best colour pictures, after the makeup and all the rest of it was properly put on the ministers to make them look good. That's what they published. That wasn't accountability; it was absolute nonsense. It did nothing in terms of accountability. It tried to fool the public into believing—and I guess it worked for 42 years—that there was actually something good happening in the province. So let's talk about real accountability; let's talk about legislated accountability right here in this amendment.

The Chair: The final word to Mr Phillips.

Mr Phillips: This has become a bit of a symbol of I think our suspicions about how you want to operate being proven to the public.

Just so the public's aware, you have proposed this bill, which in our opinion gives you sweeping powers, unprecedented, in a whole range of areas. We think you're trampling on the rights of a lot of people. We think a lot of people have had no input into this bill. It's been a very selective, who's got the most power has the most input.

We think, at the very least, you owe it to the public to review what you've done every six months.

It makes, I think, a mockery of what you told the public, that you're interested in, "This is going to be a grass-roots government." You are the exact opposite. There have never been as many backroom deals, as much done behind closed doors, as little done out in the public, as this government in its first eight months. And all of you are new, so you may be taking the word of some people that you shouldn't be, so we tried in this motion—it's a very simple motion for the public to understand: Give us a report card on what you're doing. Give us a six-month report card, so that the people who are worried to death about your abuse of power at least have a chance every six months to know what you've done to them. Very simple.

You're very proud of this bill, I gather. You should be ashamed of it; you're very proud of it. If you're so proud of it, why are you embarrassed and why are you ashamed and why do you refuse to give a six-month report card?

Then we find, as we prepare this motion, some of the government members say, "Well, we kind of like the intent but we disagree with the wording," and then your bluff is called. We say, "All right, if you like the intent but you don't like the wording, bring forward a motion that encompasses the two principles of this motion, a six-month review and a public opportunity to debate the results of that." And what did we hear? "Well, maybe we'll do it later in the week."

Frankly, I don't believe you. I'm prepared to stand this motion down until we get another motion from the government implementing these proposals, but if we wait for you to bring forward, I don't think you will. There have been too many cases throughout this process where you said you'd do something you didn't.

I can recall very early on asking the Minister of Finance for a fiscal outlook, a medium-term fiscal outlook. Now, for those of us involved in the financial area, that's crucial. We were told we would get that. Well, I was very suspicious of that and I kept sending letters. We were told we would get that. When this report came out, it wasn't there. I was misled.

I was misled, so I don't trust you any more. I don't trust you until I actually see you delivering on what you say you're going to do, so I have no confidence at all that later this week we're going to see a motion from this government with the two principles in this amendment.

For all the public out there, I think you're laid bare here. Firstly, you're too ashamed to have a six-month report on the progress of your bill, and you're too embarrassed to allow the public to debate that.

We've heard from the government members you're going to defeat this, and frankly I don't have any hope that you people will bring forward in the next few days an amendment that will encompass the essence of this motion. It's just part, frankly, of the sorry tale of Bill 26: Say one thing one day and another thing another day. You can't be trusted.

The Chair: We'll now put the question on the new proposed section 1.1, as put forward by Mr Phillips. All those in favour of that new section?

Mr Cooke: I suggested yesterday that we just do every vote as a recorded vote. Could we do it that way, please?

The Chair: Okay.

Ayes

Caplan, Cooke, Gerretsen, Lankin, Phillips.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The section does not carry.

Okay, we now return to the new section 1.2 that we stood down previously and Ms Lankin had the floor.

1050

Ms Lankin: In a sense, I'm glad that we had the debate we just did on issues of accountability and heard very clearly from the government that in fact it supports the concept but not the specifics of the amendment that was before us. I have a sense that it almost won't matter what the amendment is, that we're not going to get the support of the government, but we'll give it a try again here, because section 1.2 of the bill, a new section that's being moved, an amendment to the bill, is again a much softer version even of public accountability than the one that we just defeated.

Just to remind people what it says, it allows for 15 members of the Legislative Assembly to petition for an item of power being exercised or authorized under the terms of Bill 26 to be brought before a standing committee of the government, a legislative committee, for discussion and potentially for public hearings, if the committee sees fit, and for a report back to the assembly.

Yesterday, when we began the debate on this, Mr Maves spoke on behalf of the government caucus and said that he was very concerned about this, that in fact this could cause long delays and that the government wouldn't be able to implement its agenda.

Quite frankly, there's nothing in the amendment that suggests that would be the case at all. The actions that are authorized by provisions in the bill are authorized by provisions in the bill. The government may exercise its powers as authorized by provisions in the bill. The fact that 15 members of the assembly petition to have either the intended exercise of those powers or the past exercise of that power brought before the committee doesn't have any impact at all on the government's timing of implementing its agenda. I would think that if the government felt that it would be useful to hear from such a legislative committee before it implemented its intent under any authorized provision of the bill, it could choose to wait, but nothing in this motion, in this amendment, compels it to.

Here again we are saying that if there is sufficient concern among a number of members of the Legislature, there is an ability to request that some item of power of government being exercised under the provisions of Bill 26 can be brought to a committee, can be discussed by a committee, the committee "may," it says, "hold public hearings," but that would have to be with the agreement of the majority of the committee and the government has the majority and can control any vote in respect to that, and the committee "shall report back to the assembly."

It doesn't affect the exercising of powers by the government at all. It simply, again, is a mechanism—and I will remind you, particularly in response to Mr Clement's comments to the last amendment where he talked about wanting accountability but not necessarily legislative, "This is just another means of legislative accountability," that in terms of the way this bill is constructed and the powers that you take away from the Legislative Assembly and on to the body of cabinet and into the back rooms of the halls of Queen's Park, you are taking away from legislative accountability, and this is one very small measure to restore, after the fact, some type of legislative accountability.

I don't think I need to go on any further than that. I think many of the issues have actually been explored under the details of the earlier amendment, but I would hope, given that this is much softer—it is simply an ability for a committee to look at issues and discuss as a committee whether or not it wants to hold public hearings and report back to the Legislature—that this is one that the government would be able to support.

Mr Gerretsen: This has got to be about the softest provision one could possibly have in a bill of any nature. We're talking here about the petition of 15 members of the assembly and that the matter may be referred to a committee of the assembly. There's no mandatory aspect to that. The government could at any time block it. In other words, even if there was a petition, they could just block it and say, "No, we don't want to refer to a committee." Then, even once it's referred, it says the committee "may hold public hearings." There's no mandatory aspect at that time. It just simply allows, if there are 15 members of the assembly concerned about a particular aspect of this bill at any one time, to have the matter raised in the House, have the House refer the matter to the committee, if it so feels, by a majority vote—and the government controls that process. You have a majority of the members in the Legislature.

I can't for the life of me see how anybody could possibly be against this kind of motion. You control the whole aspect. About the only thing you don't control is the fact that 15 members may raise this issue in the House and may request that a committee in effect be struck.

Mr Clement: Two points. Firstly, I guess I was not making myself clear on the previous motion and my views on it translate into this as well. I will be very clear for the record and for Mr Phillips, who is the mover.

I do not support the concept embodied in this motion and the previous motion. I think you are on the wrong track by trying to build in extra parliamentary accountability, because the public doesn't give a fig about extra parliamentary accountability, they want public accountability.

Mr Phillips: Well, that's very interesting. You've denied the public hearings.

Mr Clement: They want us to be responsible to the people, not for us to argue amongst ourselves and posture for the cameras.

Mr Phillips: They want public hearings and you're trying to deny them.

Mr Clement: They want to be part of the public accountability. So I do not support the concept of Mr

Phillips's previous motion, nor do I support the concept of this motion. That is why I'm going to vote against it.

Mr Cooke: That's not what you said a few minutes ago.

Mr Clement: It is exactly what I said a few minutes ago, Mr Cooke. Read the record.

The second thing is that right now, as members well know, any member of the Legislature may refer to a committee of this House any matter which he or she deems pertinent. Then the committee decides.

What this motion does, it says any member may refer, but "the committee shall"—not may, shall—"consider the matter." That is the change that you are suggesting.

Ms Lankin: That's the point. The key word is "consider."

Mr Clement: Yes, I know that's the point.

The effect of that is that it will allow, as Mr Maves said yesterday, a minority of the Legislature to tie up the legitimate agenda of the government, for which it was elected.

Interjection: No. No, it doesn't.

Interjections.

Mr Cooke: That'll drop them 10 points in the polls.

The Chair: Mr Clement has the floor, please.

Mr Clement: Quite frankly, the analogy of the impacts that that has on a jurisdiction has been played out over the last few months in the United States of America, and if Mr Phillips wants to be the Newt Gingrich of the north and tie up—

Mr Phillips: Oh, don't be ridiculous, for God's sake.

Mr Clement: I gather he does not want to be the Newt Gingrich of the north. But the effect of his motion is to parlay his position to be exactly what he has now just scoffed. For those reasons, I oppose the motion.

The Chair: Mrs Caplan.

Mrs Caplan: That is the most outstanding and incredible statement.

Interjection: Outrageous.

Mrs Caplan: It's absolutely outrageous. I've been sitting on this committee with Mr Clement and I've heard him say a lot of stupid things, but I have to tell you that that last statement is unbelievable.

Mr Gerretsen: Even his own caucus agrees with them.

Mrs Caplan: It's just amazing.

I want to be very clear for the people who are watching these hearings. What this motion says is that if there's an issue of concern, 15 members of the Legislature can request that a matter be considered, shall be considered by the committee, a committee that the government controls, and the committee could decide, under this amendment, not to hold public hearings, but if it was a matter of importance, the committee, controlled by the government, could decide to hold public hearings. And in fact, when you hold public hearings, that is direct accountability to the public. That's not a discussion for debate. That's opening the doors to the people and saying, "Here are things that your representatives think are of concern, and here's an opportunity for you to speak directly to the Legislature."

To speak against that, to speak against that kind of absolutely reasonable amendment for consideration of accountability—because that's what it is; it's consider-

ation by a government-controlled committee—what that says to me is that everything we have ever heard from this government, everything we ever heard from Mike Harris, everything we ever heard from any of the members of the government who sat in opposition, any of those who were on the road during the election, talking about enhanced public accountability, lied. If they vote against this, clearly they never meant a word about being accountable to the public. And to listen to Mr Clement's stupidity in arguing against this most reasonable of amendments says to the people of this province, "Alert; absolutely be aware," because they want to do it behind closed doors. They are not interested in accountability. They don't want you to have your say. If you don't agree with them, you're a vested interest. If you want to come before committee: "Forget it. We're not going to allow that." That's what they will be saying if they defeat this amendment.

1100

I'd suggest to any of the members of this government caucus who are sitting here, now's your chance to leave the room. I wouldn't vote against this kind of a democratic motion that allows—doesn't demand. This is not a demanding motion. It's one that permits the government, which controls the committee process, to decide to allow a matter to be heard by the public. It only requires committee consideration and the committee can decide in its wisdom not to hold a public hearing.

I can't believe that any member of the government who stood in the election and talked about accountability could possibly vote against this amendment.

The Chair: Thank you, Ms Caplan. Did you want to go last again, Mr Phillips?

Mr Phillips: Thank you.

The Chair: Because Mr Gerretsen has asked—

Mr Gerretsen: I tried to be as reasonable as I possibly could in my opening comments, but what Mr Clement is suggesting, and I don't like getting personal in these matters, but this really—

Mrs Caplan: Provoked.

Mr Gerretsen: I won't, I won't, but I've got to refer to him because it was his comments basically that allow me to want to speak again.

He is somehow suggesting that the real accountability here is from the cabinet and the ministers, because the ministers basically act collectively through cabinet, to the general public and this really is sort of the new Republican, the new right-wing agenda. It really is, that we can somehow cut through all the parliamentary notions and parliamentary democracy and we have accountability to the public.

Mrs Caplan: The Legislature's irrelevant.

Mr Gerretsen: The Legislature's irrelevant. We send out press releases and we have these press scrums in all sorts of controlled situations and that's how we're going to show to the people of Ontario that we're really accountable.

I would like to remind him that in our parliamentary system, which has operated for over 200 years in this country, the direct accountability of cabinet and the ministerial system is to Parliament. I think that both federally and provincially, perhaps unfortunately over the

last 20 to 25 years, the power of Parliament unfortunately has eroded to the extent that cabinets at all levels, both provincial and federal levels, seem to be playing the predominant role and almost seem to totally disregard the parliamentary institution from time to time, but that's where the real accountability is.

The moment that we say, "Look. Cabinet should be accountable to the Legislature"—we're all elected here. You won the election. You've got 82 members on a 45% vote in the province out of 130 members, but there are 48 other people who were also just as duly elected as you were and some people in this province would even say that those people have a greater right to sit here by the mere fact that they were able to somehow withstand the Harris storm or whatever that came across this province. Okay?

What I'm saying is that we're all equal here, all 130 of us, and we are accountable to the general public. That isn't suggesting for a moment that there shouldn't also be accountability through the ministerial level and cabinet to the general public, but the initial responsibility is to each and every one of the 130 members who were duly elected in their own ridings.

For anyone to vote against a motion like this, in which you basically control the process, in which you basically control the aspect as to whether or not there are public hearings, particularly when one is dealing with a bill that has such major implications in the province of Ontario as this, to me is absolutely absurd, to suggest that somehow our accountability, namely the government's accountability, is directly to the people of this province and not to Parliament.

You've got a joint responsibility. Do not shut Parliament out of this. I am convinced that what makes democracies work successfully is in those countries in which the minority viewpoint, whether we're talking about the minority viewpoint of the general public or the minority viewpoint of those members of the House who are elected in opposition, is heard in a compassionate, fair and honest way by the government and that they adhere at least to the concept that those people have a right to be heard. This section does exactly that: that in those areas where there is a concern by at least 15 members of the assembly, hearings can be held and a committee can be struck in a process that you totally control.

So please, Mr Clement, don't mislead the public of Ontario by somehow having them think: "We're doing you a favour, Mr and Mrs Public. We are having our accountability directly to you rather than to Parliament." Yes, you do, but you also have an equal responsibility to this Parliament and that's all this motion is addressing.

The Chair: A final word from Mr Phillips.

Mr Phillips: First, the government's deliberately trying to provoke me by calling me the Newt Gingrich of the north.

Mrs Ecker: It worked.

Mr Phillips: I know. I know that you people love him. I know you love Newt Gingrich. I know that he had a big hand in writing this thing. I know that you worship at his altar. But he's not my God. Leave him to you people. Don't ever associate me with your hero, please. I know you love Newt Gingrich, but you could hardly call me a worse name. I hope, Mr Chair, you can persuade him—

Mr Gerretsen: You've ruined his day.

Mr Phillips: —if he doesn't withdraw it, to never use it again.

Interjection: What about Rush?

Mr Phillips: There's your other hero, Rush Limbaugh. I don't mean to make light of it, but for those who may have been watching—

Mr Cooke: Those names are always on the tip of their tongues.

Mr Phillips: I know. Rush must be on from 1 to 2. I think that's why you scheduled the lunch break from 1 to 2.

In seriousness now, I think the thing that perhaps people found most offensive in this bill in terms of the way you went about it was that you were refusing to give anyone an opportunity for input. All of the alarm bells in the province went off when people realized you were going to try and force this bill through in two weeks with no hearings, no public input. And now we've found that the hospitals, the firefighters, the public servants, the people involved in the environment, the people involved in policing, the people involved in our whole health care system have finally realized, among others, that you were trying to pull something over on them. You were not prepared for a legitimate debate on the bill.

The two motions that we've debated this morning both have as a fundamental part of them public hearings. Mr Clement said he doesn't believe in that. Well, we fundamentally believe in it. He says that he fundamentally—

Mr Clement: I didn't say that.

Mr Phillips: You said you disagreed with the intent of both of these motions. The intent of both of these motions is to end up with public hearings on what you're trying to do to the people of Ontario. Nothing, I think, for the public could reinforce what this government is all about than the fact that these two motions, which would make certain that there is public input into what you're doing and protect the public from the abuse that you tried to inflict on them back on November 29—I think these hearings are unfolding for the public exactly as we thought they would: with the government being prepared to use its majority to force through its agenda and to shut the public out.

These two motions we dealt with this morning both had as their essence opening the process up and having public hearings. This government's going in the opposite direction. The decisions increasingly are being made by the Premier and by the cabinet with no debate, no opportunity for public input, and now again we're going to find that a motion, a simple amendment designed to ensure that there's some access for public input into it, is once again denied. I think it's an embarrassment to the government.

The Chair: I will now put the question. Shall the new section 1.2, as proposed by Mr Phillips, carry?

Ayes

Caplan, Cooke, Gerretsen, Lankin, Phillips.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The section does not carry.

I understand there's a new section 1.3 proposed by the Liberal Party.

1110

Mr Phillips: I believe, Mr Chair, that section 1.3 was ruled out of order. Am I correct in that or am I wrong in that? It is in order? That's great. Thank you. I appreciate that, then. This is section 1.3 of the bill—

The Chair: Mr Phillips, just hang on for a second.

Mr Maves: Gerry, hold on. They're having a conference.

Mr Phillips: Lost, completely lost.

Ms Elizabeth Baldwin: I'm sorry, I may have put the wrong numbering on my memo, too. If I did, I apologize. It's 1.5 that's a money provision. This one is okay.

Mr Phillips: Section 1.3 is fine, then?

Ms Baldwin: Yes. I apologize.

Mr Phillips: This is section 1.3 of the bill. Mr Sampson, you've got your copy?

Mr Sampson: Yes, I do.

Mr Phillips: I'm very cautious of that. I move that the bill be amended by adding the following section:

"Taxpayer pledge

"1.3(1) No provision of this act or any of its schedules shall be interpreted to contravene the taxpayer protection pledge signed by the leader of the Progressive Conservative Party of Ontario on May 30, 1995.

"Binding referendum

"(2) Without limiting the generality of subsection (1), no provision of this act or any of its schedules shall be interpreted to allow for an increase in existing tax rates of new taxes without the approval of the voters of Ontario in a binding referendum.

"Same

"(3) For the purposes of this section, a fee hike shall be interpreted to be the same as a tax hike, as stipulated by the leader of the Progressive Conservative Party of Ontario on April 26, 1994."

Frankly, what we're trying to do is to interpret the intent of the government's bill. The government, I think, has told us that the intent of the bill is to implement the Common Sense Revolution, and therefore, because I think it's fair to say there are many interpretations on the bill, we're making the assumption that this bill is designed to implement what you said you were going to do in the campaign. I gather, therefore, that the intent of the bill is to implement the taxpayer protection pledge. Without perhaps being completely confident that every section does or does not do that, this is designed to make certain that you are in fact doing what you promised you would do during the campaign. That's the intent of this, and as I say, it is designed to make certain that we understand what the intent of this bill is, and we gather the intent is that you are planning to carry out what you promised you were going to do in the campaign.

Mr Cooke: I will be supporting this amendment and I think that again this builds into the legislation and into the process accountability for what was said during the election. I remember very clearly before the election and during the election Mr Harris saying things like, "There's only one taxpayer." Whenever that's used in the Legislature, the Conservative members always now give it a

round of applause, even though I'm not quite sure they understand how it's being implemented across the province when you look at the taxes and user fees and licence fees that are all being implemented at the local level in order to cope with the cutbacks at the provincial level that are all being put in place to fund a tax decrease at the provincial level. But I think this would actually build in some accountability for what was promised during the election, that in fact there would be no new taxes, that if there were going to be new taxes, there would have to be some form of referendum.

The other line that was used is: "There's not a revenue problem in the province; there's a spending problem. That's what's wrong with the province of Ontario." So I'm assuming that the Conservatives would simply have no problem with this at all because this just takes the rhetoric that was used in the election and puts it into law and says, "We intend to fulfil our promise to the taxpayers during the election."

Part of it—and I'm not sure, I'm looking for it here. Does it also say that if this isn't followed that this would automatically kick in and the Premier would resign?

Mr Phillips: That's just assumed.

Mr Cooke: That's just assumed, okay. Because I assume—

Mr Phillips: He's a person of his word.

Mr Cooke: He's a person of his word. This part of it at least would have part of his word in law, and therefore I think is worthy of the support of the Conservative members. My only upset about this amendment is that we didn't think of it so that we could move it ourselves. I think it's a good amendment that is not only worthy of support today but worthy of support next week when we have third reading and will build another level of accountability that is so needed in government today.

The Chair: Thank you, Mr Cooke. Mr Clement.

Mr Clement: Thank you—

The Chair: Oh, sorry. Mrs Papatello.

Mrs Sandra Papatello (Windsor-Sandwich): I'll defer. I'd like to hear this.

Mr Clement: With an introduction like that, I hope I live up to Mrs Papatello's expectations.

I consider this motion unnecessary and redundant. I'm well aware of the pledge to which this motion refers. Of course, I signed it as well. It was a pledge relating to provincial taxes, and I might say parenthetically, Mr Chairman, that this isn't a tax bill. There are a couple of schedules within this bill—B and C come to mind—where we are trying to fix, through legislation, the fact that the previous government did not, through legislation, pass some powers which they were in fact using. That's the only element of it that I would consider deals with taxes, but that's rather tangential to the nature of this bill.

It's not a tax bill and it does not deal with provincial taxes, which is what the pledge referred to in 1.3(1) deals with. I would refer members of this committee to the evidence subcommittee Hansard of December 18, 1995, where Mr Paul Pagnuelo, who is I believe the president of the Ontario Taxpayers Federation, which designed the pledge referred to in this motion, came before the evidence subcommittee. There was a rather spirited exchange between Mr Cooke and Mr Pagnuelo where Mr Cooke

did raise the issue of whether the pledge did include a pledge to resign and Mr Pagnuelo was quite clear on the point that it did not. I'm surprised that Mr Cooke is raising the issue again, but that's fine.

The other question that Mr Cooke raised was, did he believe that the pledge was being violated because of any downloading to municipalities that would occur or what have you, would the Premier be breaking his pledge on that front? Mr Pagnuelo said, from his perspective—he doesn't want to see tax hikes, none of us do—unfortunately not, because of the fact that the pledge the Premier made was specific to provincial income taxes. So I do find this motion quite redundant, and for those reasons and for the reasons I previously outlined about the fact that this is not a tax bill, I would speak against it.

Mrs Papatello: As per usual, Mr Clement, you never disappoint us. If I could remind the members of the government here on the committee of the taxpayer protection pledge that the Premier, then leader of your party, signed, at the outset it says that if elected, he is to support immediate passage of taxpayer protection legislation. That's signed May 30 and the witness here is Jason Kenney. I think Jason might be interested to know that, even though it's seven months after an election, even with that length of time, you would choose now to implement this kind of legislation.

Here's one way I think that's quite easy to do it so it's really not redundant in that you're simply reaffirming your support to organizations like the Canadian Taxpayers Federation, which I might say during our hearings in Windsor and several other places had the opportunity to speak to us. Of all groups, they were the one group, often composed of former candidates for your party etc making presentations, but nevertheless often they spoke about your pledge to not increase taxes and that they had to sit with your leader and, even though before 1985 Mike Harris too voted 22 times in favour of tax increases while he was a member of government, evidently he has learned the error of his ways and has come around now to sign and put his name on a paper that says he will not increase taxes.

I think with this kind of an amendment to Bill 26, even those groups which were totally in support of government during the public hearing process, who insisted what you were doing was right—although there were very few groups that did say that, there were a couple, and mainly they were represented by this organization, so I know you'll often go back to Hansard and use those as examples of public groups coming forward. I don't imagine that you consider those groups vested interests either, although you consider every other group that appeared vested interests.

1120

I think it's in your best interests, it's in Mike Harris's best interests, that you look at this amendment seriously, that you give it serious consideration, because after all it's only assisting you to do the very things that you campaigned on. Certainly in my area those things sold well. If you're walking down the street in Windsor or anywhere else, no one wants to pay more tax. You're simply identifying for the people that you too still agree with this.

Despite other campaign promises that have since been broken, here is one that you campaigned on. Just let's see whether you have it now to bring forward. I suggest to all of you that you pass this amendment. I can tell you that I'll make my commitment to informing those who are interested that this is an amendment that you would not support. If you're really true to your word, I suggest that you support it.

Mrs Caplan: The intention of this amendment is a very simple one, and that is to enshrine in Bill 26 the commitments that Premier Harris and the Conservative Party made in the Common Sense Revolution. What we've heard on this committee, time and time again, is that Bill 26 is to implement the Common Sense Revolution. We have some concerns that in fact it's going way beyond that, and so what these amendments do is say that nothing that they're going to do here would be inconsistent with the Common Sense Revolution.

Again I would say to the people who ran in the election, whose credibility is on the line, you should have no objection to this legislation referencing what you've been saying all along. It's not redundant; in fact it's comfort. It's comfort for those of us who see this as going beyond that; it's comfort to the people who believe that what you're doing with Bill 26 is implementing your so-called Common Sense Revolution. I can't understand why you would have any objection whatever to referencing it in the legislation, since that's what you told us during the public hearings that this bill is doing.

To the comment that it is not a tax bill, I'd like to just make the following point, that is, that this bill is carried by the Minister of Finance. It follows from an economic statement and it was treated exactly the way a budget is treated in the fact that it is an omnibus bill. Every justification for the omnibus nature of the bill, that is, including so many different aspects, was that it was to implement the fiscal policy and the economic statement. By virtue of the title of the bill, it is clearly one that is having an impact on the finances of the province.

I think the request is reasonable. I think it would give comfort to the people of this province that you are doing what you said it was your intent to do. If you don't do this, there is going to be an alarm bell that there's something happening here that people should be aware of.

The Chair: We'll wrap up with Mr Phillips.

Mr Phillips: I remember the taxpayer pledge very well. It was May 30, 1995. It was a great photo op for the then leader of the Conservative Party, the now Premier. Things were going badly for us at the time and I remember. Boy, there he was. It was a great big thing he signed there, and handshakes all around. The taxpayers' federation was pleased as Punch. I didn't sign the pledge because I frankly wasn't convinced that it was feasible to implement what they wanted, but obviously Premier Harris did.

I was a little curious about Mr Clement's comments. We should get a list of the promises he—I think he said he wanted to resign if he didn't keep his promises. This one I gather he's not going to resign over, although I think it's a contract, dated May 30, 1995. Certainly the taxpayer federation people believed they had his solemn commitment to it.

All this does is to ensure that the government is carrying out what it says it solemnly promised to do—nothing more, nothing less. As I say, it's not a promise we made. We would perhaps have loved to support them, but we didn't think it was a responsible promise. But you people made it and you are bound to carry out your promises.

I find it curious that here, when we're simply putting as part of the bill that you are going to do what you promised you would do, now you're going to vote against it, I gather, if Mr Clement speaks for the group. When you were looking for the votes and wanted the big photo op and the great taxpayer protection pledge, you were all there. You yourself signed it and I'm sure they were out knocking on doors for you. They weren't for me, I'll tell you that. Very few of the taxpayers were knocking on doors for you, Mr Cooke, probably, but they had them there.

Mr Cooke: All 60 of my canvassers were members.

Mr Phillips: All we're doing is putting it into the bill. I suspect, as one of my colleagues said, that if they choose to vote against it, it's a signal that before June 8 you say one thing and after June 8 you're saying another thing.

Mrs Caplan: We know Wilson did that.

The Chair: Shall the new section 1.3, as proposed by Mr Phillips, carry?

Ayes

Caplan, Cooke, Gerretsen, Lankin, Phillips.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The section does not carry.

As agreed, we'll take a 15-minute recess.

The committee recessed from 1127 to 1141.

The Chair: Welcome back to the hearings. Just for the information of the committee members, the new binder that has been passed out includes all the amendments that have been filed by all three parties, and they're organized in the order in which we will be dealing with them. That supersedes anything you've received previously.

Second, as requested by Ms Lankin last Friday in Hamilton, there's some information from the research group on user fees.

Mrs Caplan: I've had a look at that, and I'd like to compliment parliamentary research for the work they've done. It's an excellent document. For anyone who thinks that user fees are the solution—or let me put it this way so the government members will understand: user fee, copay, delisting, deinsuring; anything that will make people pay—if there was ever a compendium of all the arguments that those only destroy medicare and are not a useful policy tool, just read the work of parliamentary research. I'd just like to say thank you very much.

The Chair: The third thing, you will notice from your schedule that lunch on Friday has had to be changed from 12 till 1, because according to the order from the Legislature we have to begin the final process at 1 o'clock.

Mr Sampson, did you finally get a copy of the last information?

Mr Sampson: Mr Chairman, I'm tempted to stop sitting on your left. I did now finally receive that one.

The Chair: Picking up where we left off, I understand there's a new section 1.4 to be proposed by Mr Phillips.

Mr Phillips: I move that the bill be amended by adding the following section:

"No user fees

"1.4(1) No provision of this act or any other of its schedules shall be interpreted to allow for new user fees, as stipulated in the Common Sense Revolution document released by the Progressive Conservative Party of Ontario on May 3, 1994.

"Same

"(2) For the purposes of this section, the prohibition against user fees includes a prohibition against copayments, as stipulated by the leader of the Progressive Conservative Party of Ontario on November 30, 1993."

I'm making the assumption that this bill was designed to implement the Common Sense Revolution—that's the assumption we've been operating under—and that the government is firmly committed to what it promised in the Common Sense Revolution, even the point where the Premier is planning to step down, has offered his resignation, if he doesn't keep his commitments in here. We're just trying to make sure the bill reflects that.

I think most members remember that on page 6 of the Common Sense Revolution, it went into quite a bit of detail on copayments and user fees on drugs. In my area, seniors particularly were quite reassured by that promise. Just for the record, I should read what it says there:

"For some time now, there has been growing debate about the most effective way to ensure more responsible use of our universal health care system. In the last decade, user fees and copayments have kept rising and many health care services have been 'delisted' and are no longer covered by OHIP.

"We looked at those kinds of options,"—they were referring to copayments on drugs and the services—"but we decided the most effective and fair method was to give the public and health professionals alike a true and full accounting of the costs of health care, and ask individuals to pay a fair share of those costs, based on income." Based on income. "We believe the new fair share health care levy, based on the ability to pay, meets the test of fairness and the requirements of the Canada Health Act while protecting the fundamental integrity of our health care system.

"Under this plan, there will be no new user fees."

The intent of this motion is to implement that. It was clear that the government wanted to make sure there weren't going to be any copayments or new user fees; that rather than having, for example, a cost per prescription or something like that for people, the fair way to do that—because that doesn't reflect income—was through this new fair share health care levy that was based on income.

The purpose of moving this is to make sure we put in the act what was promised in the campaign and make sure that people can be reassured that what the government promised in its campaign is indeed in the bill.

Mrs Caplan: I'm going to speak very briefly to this. I know we'll have a greater chance to discuss the government's intention in this bill to implement copay.

I think it's important that people know that the Common Sense Revolution—and I'm holding up the one that was distributed in Oriole riding during the election campaign; it has the very nice picture of Councillor Paul Sutherland on the back—very clearly said that there would be no user fees. All this amendment we have tabled does is to say that anything in Bill 26 should be consistent with the Common Sense Revolution.

We think that's an important thing to do. I also point out that on numerous occasions prior to the election, then leader of the third party Mr Harris said a copayment is a user fee, that any fees charged to parents, as were being suggested by the previous government, any changes that would result in higher fees were also a tax and a user fee. Clearly, Premier Harris defined for the people of this province on numerous occasions what he personally considered to be a user fee, and we know that the debate and discussion on user fees and copay and making people pay is about values.

But what's really important in the debate as it relates to Bill 26 is the question of integrity and credibility. We know that the Premier has said he would resign if he didn't do what he said he would do during the campaign. He signed a taxpayers' pledge. We have the evidence of his commitment to people in this province as it related to any kind of changes under the Common Sense Revolution in terms of making people pay user fees, copay or new fees.

The amendment we have moved is just enshrining in this legislation the words and the commitment of Premier Harris, the Harris government, the Tory government. I can't see why any member would vote against that if they meant what they said when they handed out this document during the election campaign. If they vote against it, it's a clear signal that they didn't mean what they said. As Jim Wilson said last night, "Oh, that was all just posturing."

1150

That's why I say this is a question of integrity. This is a question of integrity and credibility, because people don't like politicians very much and they're feeling very cynical. While I'm pleased when people say to me, "You know, Elinor, we know that you always tell it like it is and we believe you; it's those other guys we don't believe," I know plenty of people don't like me, don't like any of us, simply because they don't think they can believe what we say. It's harmful and hurtful and it pains me to hear Jim Wilson say what he said last night, which is that you can't believe any of us. He casts the worst kind of doubt on anything we say.

I want to assure my constituents that they can have faith and confidence, not only in what I say and that I mean what I say—as I've said to people, one of the reasons I wear and collect elephants is that I'm reminded of the old Horton story, where the elephant said, "I meant what I said and I said what I meant." I think that's what politicians have to be prepared to say. I know you think this is not an important discussion, but this amendment is about holding you to what you said. People expect that Mike Harris meant what he said and said what he meant. If he did and if you did, and if the Common Sense Revolution told the truth, you'll have no problem with

supporting this amendment. It just holds you to your own commitment.

You've tried to modify that by saying, "We meant anything covered by the Canada Health Act," but clearly, that's not what the Common Sense Revolution said. My colleague Mr Phillips read it into the record. I won't waste your time by reading it into the record again, but the way I read it, the way it was interpreted by my constituents, the way it's been interpreted by the people who have been calling me to say: "How can they do this? They promised us. They said there would be no new user fees. Premier Harris said a copayment is a user fee. How can he now do this?"—I throw my hands up in the air and I tell them, "This is an issue of integrity and it tells you something about Harris and Wilson and the people of this party and the people of this caucus."

Here's an opportunity for the Conservative members on this committee to enshrine in this piece of legislation the commitment they made when they knocked on doors during their consultation with the people in May and June 1995. If they vote against this, they are voting against exactly what they said in the Common Sense Revolution document that appeared on every doorstep in the riding of Oriole and I suspect on almost every doorstep across the province.

There are very few things I feel as strongly about. As a former Minister of Health, I know that the only thing the slippery slope of user fees does is begin the dismantling and Americanization of medicare. There are many aspects of Bill 26 that Americanize Ontario's health system, and we have that potential. And it's not just user fees; it has to do with the ability of the minister and the government to micromanage.

I have numerous quotes from Premier Harris and answers to questionnaires given during the campaign when they made commitments that they would not do many of the things that Bill 26 will allow them to do—or potentially allow them to do, because we don't know how all these powers will be used.

These amendments are simple. They just say that as you implement Bill 26, which implements your CSR, it has to be consistent with what you promised. It's that simple.

I don't want to go on at length. I will take other opportunities to read into the record some of the things the Conservative party promised during the election campaign, but this one deals specifically with user fees and copay. I think it's a simple amendment, and I hope that some members of the Conservative caucus will vote for this.

Mr Gerretsen: Oh, no. Surely they all will. It's so self-evident.

Mrs Caplan: Not all of them, because I know that some of them believe in user fees and that when they were knocking on the doors and telling people they weren't going to do user fees, they didn't mean it. But anybody with any integrity, anybody who wants their credibility intact, anybody who said when they went to those doors, "I'm telling you the truth; we will not introduce user fees. Under this plan, there will be no new user fees," anybody who said that even once during the campaign must vote for this amendment, or they will

have lied. They will have lied and they will have cast a cloud over their own personal integrity. This is a vote based on your own personal integrity. How you vote today will be attached to you and your performance during your time here in the Legislature.

Mr Cooke: I support this amendment, primarily because it's the type of amendment again that brings accountability to the process. This was the promise that was made during the election campaign, and probably in one of the most cynical moves of any politician that I've seen, when the Conservative party was absolutely clear before the election in saying that copayments are in fact user fees and that they would simply not move in that direction, to then come in after they win a majority and say, "Well, what we really meant was that there would be no user fees for any service that's provided for under the Canada Health Act," is just a cynical move by the government to try to fool the public, because the Canada Health Act is clear: You can't bring in user fees. You can't bring in those kinds of user fees under the Canada Health Act. So it was a promise, in fact that was what they meant all along, and it wasn't, because Mr Harris was very specific about copayments in ODB and how they opposed that. If in fact they only meant to apply it to the Canada Health Act, there was no need to make the promise.

The other thing that makes this amendment I think important is, when you combine it with what Mr Eves, the treasurer, is asking the federal government to do, they're asking specifically that the Canada Health Act be dismantled, and if there's not some legislative protection at the provincial level, then the game plan of the provincial government is very clear: We bring in user fees now for the Ontario drug benefit program, and by changing the Canada Health Act and dismantling the nationwide system, we can then bring in user fees and a two-tiered health care system provincially and it will not be against the national law because there won't be one.

This isn't just being paranoid, this is being realistic about what Mr Eves is asking the federal government to do and what we all know the deep-seated beliefs are of this government and the Conservative party. They have never fully embraced the principles or the concept of medicare. Back in the 1960s, this province had to be brought in kicking and screaming to even get into a national health care system. In their entire time when they were in power, they would not eliminate extra-billing by doctors. In fact, when the Liberals brought in the ban on extra-billing, which was part of the NDP-Liberal accord, the Conservatives staged a filibuster in the Legislature to try to prevent that bill from passing. The government of the day had to bring in closure, which we supported, in order to get the ban on extra-billing through. If one follows the history and where this party, the Conservative party, has stood on medicare issues, it's essential that there be some legislated protection to maintain medicare against the moves that this government clearly wants to take to dismantle medicare.

If in fact the government's response is that they believe in medicare and that we are being paranoid, the way they can overcome that difficulty is simply by approving this amendment. If they approve this amend-

ment, then I think we would all be convinced that this government is very much committed to maintaining a medicare system in this province and not moving to the two-tiered system that I believe everything they've done so far indicates they want to.

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Mr Clement: I thank the mover and the other speakers for the discussion to date on this very important issue.

Let me begin my remarks by indicating, in all frankness, that I suspect that for the next four years, or however long, we on the government side and the opposition on the other side will disagree on the nature of the Common Sense Revolution document, how we interpreted it, how, after the dozens and hundreds of meetings and conferences and iterations by the grass roots of our party and by the public, we interpret the Common Sense Revolution and how they interpret the Common Sense Revolution. And not all of it is partisanship. We probably genuinely differ on the wording of that document, because with the election of this government, that document became considerably more important than it was when it was launched on May 3, 1994. I do acknowledge that there is a real difference of interpretation in some cases and that perhaps reasonable people can differ on that interpretation. That allows for the ebb and flow of democratic debate in our parliamentary democracy.

I would say, however, just for the record, that on this side of the House we are quite confident that we are following the spirit and the letter of the Common Sense Revolution document, that the copayments we are suggesting in schedule G do not violate that principle, nor do they violate the Canada Health Act, and that we are still committed to the fair share health care levy, which will be a topic of discussion as we present budgets, both this year and in the future years, so that there will be a genuine discussion on those issues and how best to restructure the health care system.

If I can reply to what Ms Caplan was saying, she talked about what the real issue is behind this motion and the discussion that we're having. To me, the real issue is how to achieve genuine reform of the health care system so the health care system can do the things that we, as members of the public, want that health care system to do. There may be genuine disagreement on different sides of the House on how to do that, but that's where our head is at. We want a health care system, Mr Cooke, that does function properly, that does have the social accountability, but that also has the means to tackle the demands, the increasingly sophisticated demands, of both the providers in the system and the ultimate recipients: you and I, members of the public. And that means that we have to think of new ways to do things.

We never said, during the campaign or thereafter, that everything in the health care system was going to be the status quo. There were going to be shifts within the system so that we could focus our resources, the scarce resources that are made available to us on trust by the taxpayer, focus them on the best way possible to achieve a health care system that works. So there was going to be some changeover in where we allocate the moneys. Anyone who advocates the status quo in health care spending is condemning this province and its population

to misspent resources and to ignoring some of the new challenges that we as a society face. I, for one, cannot countenance that. If there's anything that would be immoral, it would be that, in my earnest view.

That is how I would characterize the real issue with respect to this motion and with respect to the issue that this motion attempts to deal with.

May I say as well, just for the record, that this motion talks about user fees generically. It does not refer specifically to schedule G or the health care system. In the municipal sector, we are signalling to the municipalities that they have the right to achieve greater accountability for the using of municipal services to, in some instances, should that be the will of the local population or the municipality which represents that local population, an ability to have a user-pay concept, which is different from everyone paying for a resource or a service that is made available. So, yes, from our perspective, user-pay is one of a series of tools which may or may not be relevant and appropriate in the circumstances, and we are allowing the municipalities to have the authority to have that debate.

May I say again for the record that these are the sorts of debates that have occurred in our society for the last 20 years. There is nothing new about this debate over user-pay versus universality or however you want to characterize it. I would hope that the opposition would give us some marks for at least conducting this debate forthrightly and honestly, because, quite frankly, what has happened over the last 10 years at least, perhaps longer, is that this debate is not engaged in by the government of the day and things are allowed to sneak into place without having that debate.

There's a reference in the motion to Mr Harris's comments on November 30, 1993, and I believe what Mr Harris was indicating was: "We've got to have this debate as a society. We can't just assume that the status quo is in some"—

Mr Cooke: He said he had already made up his mind there would be no new user fees or copayments.

Mr Clement: What he was saying was that the status quo in fact was creating more user fees in the system, creating more copayments in the system, creating queue lines in health care, creating fewer hospital beds, and that no debate was happening because everyone assumed the status quo meant nothing was changing. Well, in fact things were changing. What our legislation seeks to do is to allow that debate to occur and quite frankly to have that debate openly, which is what we have attempted to do. So I would speak against this motion.

The Chair: Mr Gerretsen, followed by Ms Lankin, and finish up with Mr Phillips.

Mr Gerretsen: It's always interesting to listen to Mr Clement, and I agree with him to this extent: We do have to reform our health care system. And if the Premier had not gone any further than that, then in effect he would have free rein right now to reform the health care system in whichever way, shape or form that he and his Minister of Health would feel appropriate.

The problem is that he put a couple of riders on that, and those riders are very clearly and emphatically spelled out in the Common Sense Revolution: "We are not in

favour of the status quo. I'm not in favour of the status quo." What he said was: "We will not cut health care spending. It's far too important. And frankly, as we all get older, we are going to need it more and more." Under his plan, as a government:

"We will be aggressive about rooting out waste, abuse, health card fraud, mismanagement and duplication.

"Every dollar we save by cutting overhead or by bringing in the best new management techniques and thinking, will be reinvested in health care to improve services to patients. We call this commonsense approach, 'patient-based budgeting.'"

Of course, he also states that "There will be no new user fees."

If he hadn't said any of that, if he had not said, "We will not cut health care spending," if he had not said, "We are not going to have user fees," then the ball game is wide open. You could do the restructuring any way you see fit. He himself made it an issue of putting those two riders on that. He went around this province for well over a year making these exact same statements. That's the problem.

Now, what have we had since the government's been elected? Well, the first thing we had, you may recall, was that whole debate about whether or not there's \$17.4 billion or \$17.8 billion in the health care system. At the time you were elected, in fact we were spending \$17.8 billion a year. He said, "Well, when I made my promises, we were only spending \$17.4 billion a year," and I suppose there could be some argument about that. We're taking the position that in effect, by accepting the \$17.4 billion made in the initial promise, you have cut \$400 million out of the system, but I'll give you that one. We think it's \$17.8 billion; you think it's \$17.4 billion.

What's the next thing that happens? The next thing that happens is that it doesn't mean \$17.4 billion over the term of the government on an annual basis. No, what he's now saying, what the Minister of Health has said, what Ms Johns has said, what the Premier has said on a number of different occasions—I've heard you, Ms Johns, say this in a televised interview: "As long as we spend \$17.4 billion at the end of the mandate in 1999 or the year 2000, then we've lived up to our commitment."

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I would suggest to you that the commonsense way in which people look at that is that it is a betrayal to say you're spending \$17.4 billion in 1995 and as long as you spend \$17.4 billion in the years 1999 and 2000 that thereby you have lived up to your commitment that you're not cutting health care spending when during those five years you're going to in effect have a dip, that is just not honest. It's just not honest; it's misleading the public. If you say you will not cut health care spending, there's only one way I can interpret that, and that is you will spend exactly the same amount over the five years of your government as you're spending right now. Any other interpretation from any commonsense or any other sense viewpoint is just absolutely ridiculous.

The next thing we heard is that you've been encouraging the hospitals, different community health organizations within communities, to in effect come up with their own saving. Very laudable. It's part of the restructuring

program. If we can do things better, if we can do it more cost efficiently etc, why shouldn't we be doing it. The carrot that has been out there is the fact that whatever health care dollars are saved in that area would at least be reinvested into that community.

That's the way it was originally explained, and it's certainly the only explanation I heard up until a couple of months ago, when all of a sudden we started hearing, and it was confirmed yesterday in a dialogue that took place at this committee, "What we really mean is that those moneys will be spent, the additional savings will be spent in the communities of Ontario."

That's like saying that if money is saved in Kingston within the organizations, it can be spent in Hamilton or in Niagara Falls or what have you. Whereas philosophically I've got nothing against that, from the practical viewpoint organizations aren't going to be involved in any cost-cutting measures if they are not guaranteed that they at least can utilize that saving for new ways of doing things.

I will simply wrap up by saying that I know there has been an awful lot of rhetoric about this issue and I would just suggest to the government members that, certainly from the people that I've been hearing from over the last four or five months, there is a tremendous concern that they felt that, quite frankly, no matter which party had been elected to government, there was a solid commitment made by all three parties that there would not be any health care spending cuts.

You, in your Common Sense Revolution document, put that promise out there more clearly and more effectively, I would say, than either of the other two parties. Now in effect you're stuck with your own rhetoric. You're stuck with your own document. Live up to that commitment. That's all that this section is doing. "We will not cut health care spending." That's what you said. That's all we're saying here, not have any user fees.

Ms Lankin: I must say I find Mr Clement's comments incredibly revisionist with respect to the events that took place both over the course of the two years of public consultation on the Common Sense Revolution and the actual election campaign itself, and I find him deliberately misleading. That both upsets me and disappoints me.

I think that Mr Gerretsen raises some important points and I think that this should be pressed home to the government. Your commitment was not to touch a cent of health care spending. Your commitment was to find efficiencies and to reinvest those efficiencies in the system, and I both support that and quite frankly am sick and tired of hearing Mr Clement and others say that people who have any criticism of their government support the status quo or that nothing was being done in the health care system before.

It's bull. It is not believed by the people of the province. It is not believed by the people in the health care system who have been engaged in the development of the plans, reforming the system based on community input, based on a framework of health that understands the determinants of health, understands the need to shift from institutional spending to community spending, from illness treatment to illness prevention to health promotion.

Your government has no framework for how you're going to restructure the health care system except bottom-line efficiencies in dollars. You haven't told us once in what context, with what set of principles, with what framework. The previous government adopted a framework of the determinants of health which had been recommended by community health organizations, by district health councils, by premiers' health councils, by the Medical Reform Group of Ontario, by many organizations. You've never once committed yourselves to that. So your restructuring will take place, and I support restructuring, but I'd like to know, based on what? Quite frankly, everything in this bill tells me it's based on bottom-line dollars.

Now I want to come back to the point that you say you're going to reinvest any savings you find in the health care system. You'll have a chance in a few minutes to support an amendment that would make that a reality, and we'll see what you do on that. But let me tell you that in the Finance minister's economic statement the over \$1 billion that you are cutting from the hospital system is not earmarked to stay inside the health envelope and to be reinvested. It is very clearly in the out years put against the bottom-line deficit, to reduce the deficit.

Your commitment during the campaign of not touching one cent and not cutting health care spending and maintaining the envelope, sealing the envelope—I was in a debate with the now Minister of Health during the campaign, a health care debate down at U of T sponsored by the medical school, and I heard him say it. "The envelope is sealed. We won't be taking that money out."

Well, the economic statement makes a lie out of that, and the shift in positioning—and there's no other way to say it—but, very cynically, the positioning of the government that, "When we return to the public in four years' time for the next election we will have restored that to the \$17.4-billion envelope," makes a complete mockery of your commitment and your promises to the people of Ontario.

I understand why you're shifting your position. The promises you made were totally unrealistic. You couldn't balance the budget in the period of time you said you were going to do that, give the tax break that's going to help the wealthiest in this province the most and maintain health care spending, and we said that from the beginning. Your promises were unrealistic, you can't live up to your promises.

So what do you do? You misrepresent the past, you revise the past, you revise history to say, "This is what we meant all along and this is what we really said." Why don't you just be honest and say that the commitments you made weren't realistic in the context of what you see in terms of the fiscal situation and you're having to adjust them? For God's sake, just be honest about it, instead of all this misleading rhetoric—and that's quite frankly what it is.

Secondly, with respect to the commitment on user fees, Mr Clement goes off into talking about municipal user fees and the user pay concept and the support of the government for giving that flexibility to municipalities. I'm sorry. Go back and read the Common Sense Revol-

ution. You said that the actions you were going to take should reduce the provincial government's expenditures, including reducing transfer payments to municipalities; that you would work to ensure that municipalities did not transfer that on in terms of costs to the taxpayers, that they wouldn't raise taxes.

You said that, and then in the next breath, right in this same document, you said: "Let us be clear. A user fee is a tax." A tax is a tax. You're shaking your head. Pick up your copy of the Common Sense Revolution. It is right in there. Mr Harris says a user fee is a tax in documentation and in the press releases that went out in support of that Common Sense Revolution.

With respect to health care, I'm sorry—talk again about revisionism—we all have good cause to be very cynical about the sham that this government's trying to put forward. To suggest that when you were going door to door during the campaign and knocking on doors you were saying to seniors: "Trust us. We're not going to implement user fees in health care, and what we mean are user fees under the Canada Health Act for medically necessary services as insured under OHIP. We don't mean drug payments"—were those the words that you said?

Let me tell you, the Tory candidate who ran in the riding in which I was both lucky enough and I think honoured enough to be elected said very clearly in all-candidates meetings, "There will be no user fees in the health care system," over and over again to seniors who worried about the cost of drugs. "No, we will not implement user fees. We don't need to. We've got a fiscal plan that will work. We can balance the budget, we can give this tax break away and we don't have to cut health care and/or raise new revenues in health care other than the fair share health care levy." That's the only thing that you put out there: "No user fees." You didn't specify.

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My colleague Mr Cooke is absolutely right. If you were really talking about, as you now qualify, user fees under the Canada Health Act for medically necessary services, (1) why didn't you say it and (2) why didn't you tell people that was an empty sham of a promise because you can't do it anyway? It's against the law. Were you just really saying to people that we're not going to break the law? Does anyone go out and canvass and say that they're going to break the law? Is that all that that promise meant? The seniors in my riding understood that that meant there wouldn't be copayments or user fees implemented on the drug benefit program.

Mrs Caplan: They thought.

Ms Lankin: And I believe that every one of you sitting at that table over there believed that too until the Finance minister realized the problem that he had and realized that they had to do something and he found a fancy way to try and describe the difference in what you're doing today and what you said during the election.

I don't for one moment believe that any of you, if you even knew the difference between a user fee on the drug benefit program and a user fee under the Canada Health Act for medically necessary services as insured under OHIP—I believe most of you didn't even know the difference in those sorts of things, so I just don't buy it.

Mrs Ecker: I did.

Ms Lankin: I said most of you. Ms Ecker, you happen to have a background in health care and I believe you're one of the people who do know and I believe you're one of the people who knows darned well that the commitment that your government made during that election was for no new user fees, which includes copayments under the drug benefit plan.

Interjection.

Mr Gerretsen: That's not what I heard.

Mrs Ecker: No.

Ms Lankin: Absolutely.

Mrs Caplan: You know, Janet.

Ms Lankin: I can't believe that you could go out there and say, "Gee, you know, a user fee is a tax by any other name, but boy, a user fee is not a copayment if it's in the drug benefit plan."

Mrs Caplan: You also know it's bad policy.

Ms Lankin: Come on, let's be real. Why don't you once again just be honest with people that you've changed your position?

But you know what I want to come back to? It doesn't matter how much I argue with you about what you said then and what you say now. People will determine whether or not they feel betrayed by your actions. I want to talk about what it is you intend to implement with respect to your user fee or your copayment under the drug benefit program, and I want to talk about how dangerous that is and how damaging that is to the health of the people of this province. This is where I come back to—you've got no policy with respect to health care and the reforms you want to make. There is no framework within which you are operating.

Let me just cite a couple of examples. If you remember during the weeks of presentations we heard from people with respect to their concerns about the implementation of the user fees. Many of you, by the way, rely on, "Well, gosh, other provinces have them." Did you ever scratch the surface and determine what impact that was having on the health status of those people under the drug benefit program who were paying the user fee? Was there a differential impact depending on the wealth of the person covered under the program? Did you look beyond that? I think not, given the kinds of comments you made in response to presenters.

But you'll remember that there was one group of presenters that cited a number of papers, and I asked for legislative counsel to do some research and it has been distributed to us. I want to refer to some of the results in studies that have actually been done—not top of the head, "We need the money, so we're going to implement a copayment," not, "Gosh, others do it, so it must be okay. We're going to implement a copayment," but actual research that has been done into the effects of implementing a copayment for drugs for people who are elderly, who are vulnerable, who are poor, and what the impact on that population currently covered under the Ontario drug benefit program is of implementing a user fee. The results of these other studies are actually very interesting.

One of the first studies cited is a study from 1968 to 1971, looking at the Saskatchewan Medical Care Insurance Commission when they introduced charges of \$1.50

for office visits or \$2 for house calls. This was on physician services. They found that the overall use of the health care system fell slightly, 7.17%. One of the arguments you've put forward for this is: "Costs are out of control and people are taking too many drugs. We have to bring down utilization, and surely this will be a deterrent for unnecessary drug use." Well, here's what they found.

"Analyses found that 'there was a redistribution of services from large families and the elderly to small families and the young...[and there was] a reduction in services [to the poor] of about 18%,' which was three times the reductions for families that don't fall into the category of the poor. This about that. Think about what you're doing.

Mr Young: There's no explanation of that.

Ms Lankin: There's no explanation? Well, this is a recap, a leg research recap of the study, so before we get to that section of the bill, I expect that you're going to pull out that study and be able to cite to me whether you still have concerns that there are no reasons set out for this. That is the bottom result. Does it not concern you that poor people dropped in their utilization of the health care system at three times the rate of families that are not poor? Does that not give you reason or cause to wonder? Do you not understand the relationship between poverty and ill health? Do you understand the concept of determinants of health? It's what I came to earlier in terms of—

Mr Maves: On a point of privilege, Mr Chair: In that study which is being cited, the drop occurred with a user fee on the services; it didn't occur when a copayment came in. I just want to make that clear, that it was a user fee on services, that being put in.

The Chair: That's not a point of order, Mr Maves.

Ms Lankin: Not only is it not a point of order, Mr Maves, if you would listen to me you will see that I made that point clear when I started to cite the study. Listen, don't just pipe in and mouth off. Listen to what's being said. That's been the problem through this whole process, that you folks are unprepared to listen. You won't listen to the public, the people who came forward and who talked about the implications of copayment. We have research documents that are now put before us. You're not prepared to listen to that. You just pipe in and want to defend your partisan interests, you want to defend the ideological approach you're taking. You want to just defend it because your government has said you're going to do it. Slow down and listen.

There are other studies here which you may be more interested in, given that you want to dismiss that one because it's dealing with medical services as opposed to drug payment programs. Let's look at the study that's cited in the *New England Journal of Medicine*. There they talk about the state of New Hampshire, which instituted first of all a limit of three prescriptions per month, and then a year later they replaced that with a \$1 copayment for each prescription. They go through what the preliminary results of those studies are. Interestingly enough, the researchers found that there was a sudden, sustained drop of 30% in the number of prescriptions filled, which is the goal or the result that you've indicated you're looking for from introducing a copayment.

There it is; you find it. But again, the effects were uneven, and "recipients of multiple drugs, who were predominantly female and elderly or disabled, were most severely affected." These are the arguments we've been making to you.

There are alternatives, by the way. When we get to that section of the act, we can talk about the alternatives in terms of working with physicians for better prescribing practices, and the fact that too many seniors are being given too many drugs. The way to get at that is not to punish seniors, but to get at education of doctors, and doctors working together with pharmacists, with pharmacological education with respect to appropriate drug prescribing and appropriate drug taking. There are alternatives that are already being worked on and that have proven to be effective in other jurisdictions, as opposed to copayments, which many jurisdictions have rejected when they looked at the basis of the research.

Let's look at the study with respect to Effects of Medicaid Drug-Payment Limits on Admission to Hospitals and Nursing Homes. This one is horrifying. This takes a look at a study addressing two groups of seniors, elderly patients, one in New Hampshire and the other in New Jersey. I believe New Hampshire is the state where they did in fact have a cap or cost-sharing, and in New Jersey was a control group where they didn't have a cap or cost-sharing with respect to the program. This goes on to say that the findings were dramatic. After the cap was instituted, the group in New Hampshire, the elderly patients, were almost twice as likely to be in a nursing home after 11 months—the length of time the cap was in place was the period that they looked at—as the matched group in New Jersey. Before the imposition of the cap, the proportion of the members of the study groups entering nursing homes in the two states had been similar.

If our goal is to help seniors stay in the community to receive the services that help keep them healthy and well and in their homes and not having to be institutionalized, I ask you, take a look at that study. Think about it. Think about what the impact is here.

Another study: Effects of Limiting of Medicaid Drug-Reimbursement Benefits on the Use of Psychotropic Agents and Acute Mental Health Services by Patients with Schizophrenia. We heard time and time again during the public hearings something you've obviously ignored, because you have not proposed any kind of amendment to that section of the act. We heard that people who are suffering from mental illnesses or psychiatric illnesses will be less likely to maintain a regime of needed medication to help them stay out of institutions with the imposition of a user fee. Many of those people are on the margins of our economy, and the impact of this is incredible. I asked Ms Johns yesterday if they were prepared to set out in regulation that these people would not be affected. She said she didn't know; she couldn't give me that commitment. But she and you and others on that committee heard this presentation over and over again.

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Well, here's a research study that was done that took a look at this particular community and the effect of introducing caps and copayments and the drug payment on this group. Interestingly, it says the overall increase in

mental health care costs was 17 times as high as the saving in drug costs. We heard that over and over again, that it's going to cost you more because you're going to have people being moved: seniors into nursing homes and institutions; persons with psychiatric disabilities who have been able to maintain themselves in the community through needed medication ending up going into institutions. It's going to cost you more. So even in terms of the goal of your own legislation and the goal of introducing this user fee, you're likely to have the exact opposite effect, not to mention the deleterious effect on people's health. I ask you very seriously to take a look at that.

There was another study that was done, *The Effect of Cost Sharing on the Use of Antibiotics in Ambulatory Care*. It found that there was a reduction overall in antibiotic use; however, it reduced the use more for lower-income people—by about 50%—than for middle- and upper-income people. We've said this over and over again. That study and many others concluded that cost-sharing is not an appropriate way to reduce inappropriate uses, in this case of antibiotics, because it tends to reduce needed care as well. In addition, it does so in an inequitable way, since poorer people's access to these drugs was reduced more than higher-income people's.

Here in Canada, *Why Not User Charges?* The Real Issues, a study that was done and conducted by health economists—it included Greg Stoddart, but I know that Barer was involved in that and Evans and very many well-respected names in the world of health economics in this country who put together a study for the Premier's Council on Health, Well-being and Social Justice. The research came up with two or three major findings: that patient-initiated contacts within the health care system, ie, visits to physicians and emergency rooms, make up only 8% to 10% of the total health care spending; that user charges tend to deter appropriate care as much as inappropriate care, and particularly for low-income people; and that health care costs were rising more quickly before the introduction of universal, publicly funded health care in 1971 than they have since that time, while in the United States, where we know they have a very different system, costs have continued to rise at rates similar to those seen in the 1960s.

The conclusions of all the research have been very clear, yet you're just marching ahead and doing it because you're driven by the bottom-line fiscal situation, not because you believe this is going to provide better health care. If you do, you're wrong. You haven't read the research. You haven't understood it. You're just moving ahead. And it's absolutely contrary to everything you said in the campaign and in the Common Sense Revolution.

The last point I want to make, Mr Clement, is with respect to your suggestion that the debate about user fees or the debate about moving to a two-tiered system is one that is out there and is current in the public but has never been allowed an expression, and you should be congratulated for bringing it to the forefront and for allowing a forthright debate of the issues. Give me a break.

Mrs Caplan: No debate.

Ms Lankin: There has not been a forthright debate of those issues through the course of these hearings, and you

know darn well what it took to get these hearings and the length of time to be able to have hearings in January and travel the province and give people time to reflect on the bill.

I want to remind you of the words of the bioethicist Dr Kotalik, who came before us in Thunder Bay. I thought it was a very important contribution to the debate in terms of Bill 26, but to debate overall with respect to the future of health care in this province and in this country. He indicated that in fact there are schools of thought out there, and there always have been, who would argue that we should move away from universality or who would argue that we should introduce user fees—that's another way of saying the same thing—and the system should change more to a user-pay, that there should be more market-driven forces in it like your introduction of foreign-owned for-profit companies coming into the independent health facilities sector. He said, though, that that debate has not taken place in this society, and from an ethical point of view it's critical that before the government gives itself the powers to unilaterally take us down that road—which all of us who know anything about the health care system and see the way you have constructed this bill believe very firmly is the direction you will take us, because you will be forced by the bottom-line fiscal, with no parameters, no framework, no philosophy or principles of health care reform, to take the easy way and the immediate way under the powers you've given yourself.

He has stressed that the principles of health care in this country of comprehensiveness, of portability, of universality, all of the aspects we know of our publicly funded health care system, have at the base of them a set of values which are intrinsic to our Canadian culture, and that this bill leads inevitably to a move away from that system and a change, inevitably, in the value system that underpins that system. And he argues that a shift in the value system which underpins our universally accessible public health care system is a major shift in the value systems of the culture of Canada and needs to be debated openly by the public and a consensus needs to be arrived at as to whether or not we are prepared to see that change take place.

He doesn't argue that we would come down on that issue one way or the other. He suggests that debate needs to take place in an open forum and not behind closed doors with regulation-making powers being given to the cabinet of Ontario: not by a government that says they won't cut health care and then proceeds to do it and proceeds to tell people, "Well, what we said was something different," not by a government that says they're not going to introduce user fees in the health care system and who proceed in spite of all of the relevant research indicating that this will have a differential impact on people depending on their income levels and a deleterious impact on people's health, that you're going to proceed to do it when you said you weren't going to do that at all. This doctor, this bioethicist, said: Put that debate out in the forefront. I implore you to do that.

Quite frankly, that's where the debate should be. It should be among people in this province and in this country to determine where they want to go with the

health care system. I'm prepared to predict where they will come down, and it is not on the side of this government; it is not on the side of the actions that you're taking under this bill. It is not on the side of introducing user fees or copayments in the drug plan when they understand what the impact is on people's health, particularly on poor people's health. But have the debate. Don't do this behind closed doors, which is the approach that you continue to take.

The amendment that is here is here to make a point. It's here to say to you, if you've committed yourself not to introducing user fees, not to introducing copayments, live up to that commitment. Put that commitment on yourself. You're prepared to commit to the taxpayers' federations and taxpayers' coalitions that you're going to introduce a taxpayers' protection legislation and you wouldn't put that amendment in here, but you're prepared to commit to that. It's like the Republic of South Africa that wants balanced-budget legislation on that they're going to bind themselves with, but you won't bind yourself to your other promises of not introducing user fees in the health care system, of not shifting the financial implications of your cuts down to municipalities, which will raise it through user fees and through different methods of taxation, property taxes, which again don't have any relationship to the concept of ability to pay. You're stepping up on putting ability to pay as a fettering of operators' powers in decision-making in public sector organizations where there's no right to strike, but you don't consider ability to pay with respect to the public and user fees and higher property taxes are going to affect lower- and middle-income people versus high-income people.

Your refusal to deal with some of the early amendments to this bill and to put it in the context of your own campaign rhetoric speaks volumes about what the people of Ontario can expect from this Conservative government, as, quite frankly, does this whole bill: the approach you have taken, the lack of due process, the manner in which you continue to try and ram it through, the manner in which you continue to refuse to deal with any amendments from the opposition.

Quite frankly, Mr Chair, I feel that over the course of the week I'll be proven right, that this is again a sham of a process. All I can say is, thank God I rushed you this far, because the some 100-odd amendments that are you are going to move, many of them, as we've heard, being technical and such, wouldn't have been done at all. The unintended consequences of the bill, we wouldn't have caught any of them. I suspect there are many, many more that we haven't caught yet. Yesterday we just found out about the tolls on municipal roads.

This is going to be a journey of discovery that we will take with you and the people of Ontario over the course of the next years as we see this bill being implemented and the effects of it touching every aspect of our communities' lives. A journey of discovery.

1240

Interjection: The slogan of Ontario.

Ms Lankin: The slogan of Ontario, someone's saying—"Ontario: Yours to discover." I predict that after four years of this government, unfortunately the challenge

is going to be, "Ontario: Ours to recover." Thank you very much.

Mrs Caplan: I'm going to be very brief. The studies Ms Lankin referred to are correct. The impact on lower-income Canadians and Ontarians and those in the United States who were part of those studies is clear. Their health status is impacted; there are serious compliance problems—that means they don't take the drugs they are supposed to—and it ends up costing you more money. One of the concerns I have is that Mike Harris and the Conservatives feel they can implement this policy simply because it has been done in other provinces, but in fact all the studies from those other provinces add to the weight of why Ontario should not follow that path.

One of the things that did bother me a bit while Ms Lankin was speaking was that the NDP had considered copayment in Bill 50 when they brought it forward. I can now imagine, after listening to the eloquence and the passion of the previous speaker, that it was a proposal from the treasury that the former Minister of Health likely knew nothing about. I would imagine that the speech she just made before this committee she also made in a cabinet meeting when they were finally aware of the proposals that would have permitted user fees in the drug plan. I was disturbed at the time to see those proposals come forward. I know, as a previous Health minister, as a matter of fiscal policy the treasury has always wanted to do this. I would imagine that there has been very little discussion or debate at the Conservative caucus.

The point I want to make as I end my remarks on this debate is that if we're going to do what Mr Clement says, that is, have a values discussion and debate, they should have it in their caucus, we should have it in the Legislature, we should have it in public forums. The NDP, when they were caught trying to put the ability to allow government to have copay in their Bill 50, once that was drawn to the public's attention, they withdrew that, because I think their own caucus said, "What the hell are the treasury and the Finance minister trying to do here by putting that into an omnibus bill?" They took it out.

I'm hoping that when the Conservative caucus start to listen to their own constituents and realize that this isn't about health policy, isn't about a discussion and a debate on the values of medicare and whether we want to see our health system on that slippery slope of user fees, in spite of all the evidence that says it's the wrong way to go and is going to end up costing us more money and hurting the people we want to protect—those most vulnerable in our society, those who are made sicker because they don't have access to appropriate medication—that user fees for drugs have nothing whatever to do with optimal therapy; that the mother with a sick child isn't going to go out to barter for drugs; that access to drugs for people who are low-income and rely on the Ontario drug benefit plan, with incomes under \$16,000, simply cannot afford the copayment, and that even those over \$16,000 may choose not to have their prescriptions filled; that those people who are using the kind of psychotropic drugs required for those who suffer from mental disorder and have to take those drugs—we heard time and again from those appearing before the committee that it would

have an adverse impact on their health, would have an adverse impact because they would decide not to take those drugs if they couldn't afford the few dollars this government is charging them. Every study that has been done says this is bad health policy. Today we realize that this is fiscal policy, not health policy.

It also runs completely contrary to the promises of Mike Harris in his document that we call the CSR, the Common Sense Revolution. This motion is an opportunity for the Conservative bench to do what the NDP bench did when their government tried to bring in Bill 50 the ability to charge copayment—stop them. Stop them from doing something that you know is wrong and stop them from doing something that you know you promised you would not do. Just as the NDP caucus stopped Floyd Laughren from including the provision of copayment in Bill 50, so the Conservative caucus can stop Ernie Eves from imposing user fees. This is your chance, by passing a motion that clearly says that whatever you're going to do has to be consistent with the Common Sense Revolution. If you do that, you will have stood for what is right and what is honest. If you don't vote for it, your constituents and the people across this province will know that they cannot trust you, and it will be a breach of their confidence and a breach of trust.

The Chair: Have you anything to add, Mr Phillips?

Mr Phillips: Yes.

Mrs Ecker: Surprise.

Mr Phillips: I'll be the judge of that.

Just to wrap up on the motion, this is actually quite an important motion. I don't think there's any doubt that before the election the government made a couple of very solemn commitments to people. Among others, one was that there would be none of these new user fees on drugs. You were very clear that user fees, copayments, none of those things were going to be allowed. You had a different way of doing it, you said. You may now have changed your mind. Maybe you've changed your mind now and said, "We were wrong."

Mr Gerretsen: They're shaking their heads no. They must be prepared to vote for this.

Mr Phillips: There's only one explanation. You have changed your mind on what you promised before the election and what you want to do now.

The second very clear commitment that Premier Harris made was that he said a user fee is a tax. He was very clear on that and he attacked the NDP relentlessly on that, saying many times that a user fee is a tax. The people expected when he made a big commitment around taxes that he wouldn't simply say, "We're going to hold the line on those taxes but allow a bunch of new user fees." This bill, without a question of a doubt, opens the floodgates on user fees. We didn't go to one community where the local municipality didn't say, "We have been cut dramatically on our transfer payments by the provincial government and we have been assured that one thing we will be allowed to do would be to make up a portion of that through user fees." No municipality said they are going to reduce property taxes and put user fees on. They all said—when we were in London they said, "Get this bill passed because we have to get some new user fees in place."

This opens a floodgate of new user fees. I don't think there is a department in the municipalities that will not be subject to user fees. In Kingston, the police said, "Listen"—

Mr Gerretsen: A great place.

Mr Phillips: Yes, it is a great place. The mayor said there, "Where you don't wear a seatbelt, we're going to have you come in and do a safe-driving class and we'll charge you a hundred bucks." The police are turning over every rock, opening safe-driving schools, to try and make up for their lost revenue.

1250

Mel Lastman has said, "If your car catches on fire anywhere in North York and you don't live there, we are going to charge you a fee." We heard some people with the spectacle of driving as fast as they can to get over to Scarborough with a flaming car so they won't have to be charged a fee. We heard about putting fees on garbage; there is zero question that is going to happen. Mel Lastman has said, and Al Leach supports him, about putting fees on the use of libraries, and there is no question of that; inspectors. If you can believe this, the city of Kingston even said: "Please let us increase the fees for death certificates and for marriage licences so we can save two jobs. We can save two jobs if you will increase the fee on, when someone dies, getting the death certificate, and when two people want to get married, getting the marriage certificate."

The point I am making in all of this is that what you are asking us to approve is a bill that we know will result in an incredible number of brand-new fees in every single department in municipalities. It cannot come as a surprise to any of us when this happens. We have been told that's what's going to happen; the bill permits it. We heard yesterday, for the first time as clearly as I've heard, that tolls on municipal roads—and it can be done. With the new electronic systems it is now possible to have tolls on municipal roads. So it should come as no surprise.

Why is all this happening? It is happening for two reasons. One is that the Conservative Party philosophically believes that the way you get this done is you start putting a fee on it, so those who are least able to pay are penalized the most. The second thing is, there is no doubt, that it is your intention to privatize a whole bunch of municipal services. We understand that. The way you do that is you get, what you call in your money markets, a stream of revenue on it, and once you get a stream of revenue on it, you sell it. We know what is behind these provisions for licensing and for fees. First you get the fee on it and then you privatize it.

The point I am making is that if the government were simply up front with people and said: "Listen. We misled you. We didn't plan to hold the line on taxation, including fees. We misled you on that. We are going to permit municipalities"—and you called it this in your briefing—"unlimited flexibility for fees." That is your language, "unlimited flexibility." It is clear that unless it is prohibited in the legislation, it is permitted. We heard that yesterday. Unless a toll road is prohibited for municipalities it is permitted. We can only dream of the things that are going to be permitted.

This relatively small motion is important. If the government members choose to vote against it, we know what the intent is: that property taxes probably will remain where they are, but every department in every municipality will be scrambling to find new user fees. As I say, it will be the Metro Toronto police safe-driving school, public health inspectors, the libraries, the toll roads. Every single department will be scrambling to try to find a way they can put a fee in their area.

The second thing is, no question, this will be a bonanza for the money markets because they will privatize all sorts of these things. That may or may not make sense in certain municipalities, but we should have been clear with the public in dealing with that. This will be a bit of a litmus test for the government. If it defeats this motion, I think we then have pretty clearly on the record the government's intent.

The Chair: Shall the new section 1.4, as proposed by Mr Phillips, carry?

Ayes

Caplan, Cooke, Gerretsen, Lankin, Phillips.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The section shall not carry.

Mr Phillips, I understand you have a new section 1.5.

Mr Phillips: Yes, Mr Chair. It may take me a moment to find it; I'm being overrun by paper. We do have a revised section 1.5 of the bill. Legislative counsel indicated that our previous wording was not appropriate, so we put it into appropriate language. It may be that not all committee members have this, so I will read it. We may, in the end, deal with this right after lunch anyway, which may give people a chance to get a copy.

I move that the bill be amended by adding the following:

"Report on savings:

"1.5 Each annual report of the Ministry of Health shall include an item that sets out any amounts saved as a result of actions taken under schedules F, G, H or I and shall specify whether those amounts have been reinvested in the Ministry of Health as stipulated in the Common Sense Revolution document released by the Progressive Conservative Party of Ontario on May 3, 1994, and any amounts not so reinvested."

The Chair: In view of the fact that it is a few minutes to 1, we will recess until 2 o'clock. We will get a copy of the motion for the rest of the committee members.

The committee recessed from 1259 to 1400.

The Chair: Welcome back to the Amethyst Room for continuation of the hearings on clause-by-clause on Bill 26. When we broke at lunchtime, Mr Phillips had proposed a new section 1.5 to the bill. Mr Phillips, everyone has copies of that now, and you have the floor.

Mr Phillips: Just to refresh our memories, one of the solemn commitments by the government in the campaign was that, to use their language, they would not touch a penny of health care funding, if the members recall that. I must say they've since revised that a bit to say, "Well,

we'll make sure we don't touch a penny of it at the end of our mandate," although I would offer a reward of \$20 if you can find—

Interjection: Twenty?

Mr Phillips: Twenty, that's all I can afford—if you can find anywhere where before the election your campaign promise was that you would have the health care spending at the same level in the year 2000 as it was before the campaign.

Ms Lankin: I'll add \$20 to that.

Mr Phillips: For those who can't hear, my colleague Ms Lankin added \$20.

It was very clear during the campaign, and that provided a lot of reassurance to people, that it was the government's intention to essentially freeze health care spending and you were going to keep it at \$17.4 billion. To use your language, you would not touch a penny of it. That was what the public expected.

Certainly you got a lot of support from those in the health care sector, who felt: "That's their commitment. They're not going to touch a penny of it." Everybody in the health care sector is going through turmoil right now. There's restructuring in the hospitals for our doctors; there's incredible change going on, as we all know, in the home care sector; there's incredible change going on in the drug benefit plan. But there was a commitment that this pot of money would be frozen.

We now find after the election that the government is saying something different. They're saying: "We're going to cut \$1.5 billion out of the health care budget"—and that's what this bill is all about, cutting \$1.5 billion out of the health care budget— "but," the government is saying, "we're going to restore it at the end. Just before the election, it'll be back up to \$17.4 billion."

I would say to any member today or tomorrow or any time before the hearings finish, bring me the evidence that before the election you were promising that you would make sure that in the year 2000 health care spending was the same as it was in 1995. Your commitment was in 1995 and in 1996 and in 1997 and in 1998 and in 1999 and in 2000 the health care budget would be frozen, but you've changed that commitment. In my opinion, you've broken a promise.

This amendment is designed to assure the public that each time you cut somewhere you identify that amount of money, you record it in the annual report of the Ministry of Health, you show the health results of this bill, and you specify specifically where those amounts have been reinvested. I can't imagine you not wanting to do this. You've said all along that you're going to take money you save and reinvest it. It is simply a small way of assuring the public and showing the public where you've cut and where you've added back. I see no reason why the government can't support this. I think it requires relatively little expense for the government to do this, and it's a way for the government to clearly outline for the people that it's kept its commitment on the health care spending.

Ms Lankin: I will be supporting Mr Phillips's motion, but I want to move an amendment to that motion. It reads as follows:

I move that the motion of Mr Phillips to add section 1.5 of the bill be amended by adding the following subsection:

"Same

"(2) For the purposes of subsection (1), an amount shall be interpreted to be reinvested in the Ministry of Health only if it is reinvested in programs and services both delivered and regulated by the Ministry of Health on the date this act receives royal assent."

I'll speak briefly and hold it to one intervention, unless provoked. I support the comments Mr Phillips made. I think the basic argument here is whether the government really intends to live up to its commitment to seal the health care envelope. I can accept the commitment being made today that as you find savings you will reinvest them in health. That's quite a different positioning from what you said during the campaign, because I think you now see that you're applying the savings you're finding to the bottom line of the deficit reduction for a couple of years and then maybe you'll reinvest. Be that as it may, that's an issue in terms of integrity of commitment, integrity of promises, and that's an issue we can battle on another day.

What is clear is that at the end of the day you have committed that your savings will be reinvested over periods of time in the health care ministry, in the health care services provided by that ministry, and that when you return to the public in an election, you will have maintained that spending envelope.

The reason for my subamendment is to make it very clear that we're talking about the \$17.4 billion currently identified as the budget of the Ministry of Health and that that is the budget that you're going to maintain. I'll be very honest and very straightforward as to why I put this amendment forward. All the discussion that is taking place inside government, in the bureaucracy right now, which may or may not be the intent of your government, and you will determine whether you follow through with this or not, is that the Ministry of Community and Social Services is going to be restructured in a major way. There is speculation that the income support packages of activity within that ministry will be moved to the Ministry of Finance. Whether that's the case, I don't know.

But more relevant to today's discussion, the buzz, if I can call it that, inside the bureaucracy is that many portions of the Ministry of Community and Social Services that deliver community services—children's mental health services particularly is the one area identified as being a key candidate for being severed from the Ministry of Community and Social Services and being moved over to the Ministry of Health. If you choose to do that, that's fine, I've got no problem with that, but let's be clear about your commitment with respect to the \$17.4 billion, that you don't take \$1.3 billion or whatever it is in cuts to the hospital sector and then bring over an area of activity from another ministry with a budget attached to it and call that beefing up the health spending envelope back to \$17.4 billion.

What this does is define the \$17.4-billion envelope as those types of services that are currently delivered and/or regulated by the Ministry of Health. Of course, there's room for development of new services etc, but what there

would not be room for is moving over an area of activity and a budget envelope from another ministry and somehow trying to con the people of Ontario that you've lived up to your commitment by doing that.

1410

It's a very important amendment to Mr Phillips's motion overall. This is something I have heard you say, as members of the government back bench on this committee, over and over and over again, that you are committed to the reinvestment of the savings found under the health care sections and schedules of this bill into delivery of health care services in the province. We can quibble about what your commitment was in terms of the timing of that, but your commitment to do it has been articulated and rearticulated by ministers, by the Premier, by parliamentary assistants and by members of this committee.

There is no reason, other than maintaining the flexibility to do other than what you have committed to, for you not to support this motion. This doesn't restrict your spending or your decisions in any way. It is not a money bill proposal in that sense. That would be ruled out of order, as we know, unless the minister himself brought it forward, which would be a welcome addition, if he would agree to do that. All this does is call on you to report accurately and fully the savings and the reinvestment. It keeps you honest.

If you're prepared to say over and over again to those of us on this committee and to the public of Ontario that you are going to keep this promise, which we already believe you've redefined, repositioned—you're quite revisionist in talking about what your commitment was, but be that as it may, in terms of the commitment you're making today, if you're prepared to continue to say to the public of Ontario that it is a commitment of the Progressive Conservative government, there is no reason you should be hesitant to report these matters to the Legislature so they can be there for full public scrutiny.

That's all I have to say at this time. I hope members will support my amendment to Mr Phillips's motion, and I hope the government members will support the motion overall.

Mr Clement: I have a point of order first, Mr Chair, then some comments. Do I take it from the mover, Ms Lankin, that the consideration of this amendment means that her party's motion respecting a new section 2.1 is withdrawn, since it covers essentially the same ground?

Ms Lankin: I'm very certain that if you pass this motion with my amendment, I would withdraw it when I come to 2.1. We're not quite there yet, but that would be my intent, yes.

Mr Clement: I don't want to have this discussion twice.

The Chair: Basically, we deal with the motions in the order in which they're presented, so we'll deal with this one at this time, Mr Clement.

Mr Clement: Thank you, Mr Chairman. Are we dealing with the amendment first? Should I confine my remarks to—

The Chair: We have to vote on the amendment first, but you can address the amendment and the motion together.

Mr Clement: I would be happy to do that. With respect to the amendment first, my problems with the amendment are that I fear this amendment would enshrine the status quo. The mover of the motion has made it abundantly clear throughout the whole presentations that she understands, as a former Health minister, that the status quo is not an option for us. She took me to task at one point during the hearings when she took my remarks to mean that I felt she was embracing the status quo, and I think she's made a good point.

We heard from all the presenters, none of whom, as far as I can recollect, was in favour of the status quo. They all understood that change was necessary and in that regard they were looking forward to a process—we disagreed as to the ways and means, but they were looking forward to a process—in which the right form of health care for the right people in Ontario would be available to us as citizens and as people living in Ontario.

My fear is that this only bolsters the status quo by focusing on the programs and services delivered and regulated by the Ministry of Health at this date. If the mover would try to correct this—I don't think it is correctable, because we are talking of future events of which we have no knowledge until they occur. I'm wondering whether this is salvageable even if it were changed. That's my problem with the amendment to the motion.

With respect to the main motion that we are discussing, I consider the point it is trying to make as a valid point. I would argue again, as I have done earlier this day, that there are current mechanisms in place which allow for parliamentary accountability, which is what Mr Phillips is talking about in this particular case, to occur. We have a budget process, pre-budget hearings, which then are incorporated into a budget bill, so we as parliamentarians do have an opportunity to hear what the public is thinking about the direction of the budget and we have an ability to discuss those issues and have that debate, which no doubt we will have, about how the funds are being reinvested.

We have the ability as parliamentarians to debate and discuss ministers' announcements. For instance, the minister has announced already reinvestment of some of the savings—some, not all—in cardiac care, in ambulance services and in other initiatives. I recall that in the House there was a rather robust debate about whether this goes far enough, whether this is on track as to where we should go in our health care system, and those are legitimate debates that parliamentarians can engage in.

Finally, we have the estimates process and the ability of the Legislature, through its committee, to engage in a debate about whether the expenditures of a ministry are on track, whether they should be changed at all, whether they mesh with the overarching strategy of the government and its promises to the people.

I think we are on the right track in terms of the parliamentary aspect, and I would refer to my earlier comments when I said we have to find other ways to be accountable. Mr Phillips is absolutely right, but they need not be strictly in the parliamentary domain; there are other ways. An earlier speaker belittled me because I mentioned town hall meetings, but town hall meetings are

a legitimate way to get at where the public is in a particular riding or a particular geographic region. It's not the only way. I'm not saying we have cornered the market on the best way to get public input through just town hall meetings, but that was an example of the kind of thing that we as parliamentarians should be engaging in. It's not the only thing, by any stretch of the imagination. We should constantly be thinking of new ways to be responsible and responsive to the public we represent.

From that perspective, I feel that section 1.5 is redundant because of the current parliamentary practices and traditions, and furthermore, we should be looking at different ways, other than the ones presented by the mover of the motion, to deal with increased accountability.

Mr Phillips: I found Mr Clement's comments unusual in that he said Ms Lankin was trying to embrace the status quo. All Ms Lankin did in her motion was to put into words in this amendment what the Conservative government promised. If she's embracing the status quo, I think you're looking at the wrong person to accuse of that. Accuse yourself of that, government, because she is simply putting into this amendment what you promised. If you don't like what you promised, I can understand that, but you promised during the campaign that you would maintain the spending level in the Ministry of Health at the current levels. Maybe you're saying now that that was the wrong promise and maybe you're saying that this makes the finances too difficult. I don't know what you're saying. But the last thing you should do is accuse Ms Lankin of maintaining the status quo. In this amendment, she simply is saying: "Here's what you said you were going to do. Now let's just monitor that."

I personally have no difficulty with Ms Lankin's amendment because your pre-election promise was clear. Now, post-election I do fear you may be starting to play some games with people and will start to say, "Well, that's health care and that's health care," and we'll have once again misled people.

On the idea that this is not helpful to the public in the debate, I argue exactly the opposite. The only way the public can participate meaningfully in the debate is to have the information. If you hide the information from people, it's an uninformed debate.

1420

We know that because for the first time in the history of the province of Ontario, we have no budget. This is the first time since Ontario became a province that the government has not presented a budget. It's never been done before. And they say, "Well, we only got elected in June." There have been lots of governments elected in June that prepared a budget.

Why have you not done it? Because you don't want the public to have the information. I was, frankly, terribly offended—"almost outraged" sounds typical politician I guess, but I was very offended—

Mr Gerretsen: You were outraged too, Gerry.

Mr Phillips: I was outraged, but you're not allowed to sound extreme so I'll just say that I was extremely offended to read in the newspaper that Standard and Poors said they had an opportunity to discuss internal, not publicly available forecasts on the government's revenues

and expenditures, and they were able to conclude by that certain things that the public has no idea on.

And I was offended on two counts. One is that you have refused to give the public the most important financial information for the province, what's called the medium-term fiscal outlook. You've refused to do that. It's never ever happened before in the history of the province. And then, privately, organizations are getting that information. Frankly, they benefit from that. If you've got inside information, you benefit from that. Standard and Poors is an extremely reputable operation, top class, undoubtedly, but you put them in a tough spot because you refuse to give the information publicly and then you discuss it privately.

Why do I go through all of this, Mr Chair? It's because if you truly believe that the public should participate in this debate, then you've got to provide them with the information, and frankly, we don't get the information from you. So the amendment and my motion is designed simply to give the public the necessary information to debate this in a meaningful way.

I, for the life of me, cannot understand why in the world you would ever say no to this, other than the fact that you want to keep the information hidden from the public and just simply allow the debate to take place only in one place, and that's in the cabinet room and not out in the public where it should take place.

Ms Lankin: I'd like to respond to a couple of points that Mr Clement made. First of all, there is nothing about my amendment which codifies the status quo. What it does is it protects the public against a government playing shell games with budgets of different ministries, and in fact when we all are aware of at least the fact that it is being contemplated that you will move services and a budget envelope from the Ministry of Community and Social Services into the Ministry of Health, we want to make sure that those moneys that you're bringing in supplement the moneys available in the Ministry of Health and the services and supplement your commitment to seal the envelope at 1.4 and don't replace dollars that you are cutting and applying to the deficit.

Because that would be a real scam on the part of the government. It would be a real shell game being played and it would be a real misleading of the public of Ontario. That's what the amendment achieves. It doesn't achieve maintenance of the status quo, and I remind you this doesn't restrict whatever you decide to do. This just forces you to report it and report it in such a way that it can be judged against your own government's commitment. So I, (1), take offence at your description of it, but (2), really challenge the accuracy of your description of it.

Secondly, I wanted to respond to the points you made with respect to the parliamentary accountability measures that are already in place, and you talked about budget and estimates in particular. I want to let you know, again, having been a minister, been through this process, defended estimates in front of the estimates committee, then part of contributing to the discussions around a budget and the budget for the ministries that I've been involved with, but in the information that is presented either through a budget process or through an estimates

process, it is impossible for you as a legislator or any member of the public to understand the specific changes inside a line item of a budget or a set of estimates.

So you might be able to determine that the hospital budget for the province of Ontario, overall, has been decreased by \$1.3 billion, as was set out in the economic statement, and which will probably be reflected in the budget, in the line-by-line items in the estimates. You cannot tell, from any specific actions you take under the course of this legislation with respect to closure or merger or rationalization of services, the amounts of money that have been saved, identified as operational savings achieved and then reinvested.

That's the information that we think you need to be upfront with, that you need to be very clear with the public with, that you need to be open and presenting as very concrete information for the public to judge whether or not in fact you are living up to the commitment that you have made day after day after day during the course of these hearings with respect to this bill. It's not just in the Common Sense Revolution. You've been repeating it every day as we've gone through these hearings.

This is quite simple. It says, "Okay, report the savings in health care in the areas that you take action under this bill, these new powers that you've said you needed to have in order to restructure and save money to be able to reinvest in other areas in health care delivery." It says, "Show us where you've saved it, show us how much, and then show us where you've invested it and show us how much, and by the way, don't play a shell game, don't scam us, don't bring in budgets from other ministries and say that you've lived up to your commitment." That's all this amendment does. I'll be interested to see whether or not you support it.

Mrs Caplan: I'm going to be very brief. I agree with exactly the categorization of what this contains, both by my colleague Mr Phillips as well as the analysis that's just been given by Ms Lankin.

As a former minister, I can tell you, I've gone through the estimates process. I've also had the requirement to draft up annual reports. When we listened to government members about their desire for new ways of accountability, when they rejected the motions that were put forward that would have allowed legislative committees to look at issues in areas of concern, one of the things that in particular Mr Clement noted was the annual reports of ministries. This amendment is a simple request that within the annual report the Minister of Health detail information on savings and reinvestment. That's completely consistent with what was in the CSR and it should cause no problem to the drafters of an annual report.

Further, I'd like to support the amendment by Ms Lankin for the following reason: There are a lot of rumours going around this place about significant restructuring of ministries and the commitment that the Harris government made on the sealing of the health envelope at \$17.4 billion. In order for that commitment to have any integrity whatever, they have to be held accountable to the dollars presently in Ministry of Health programs. The rumour that's going around is that particularly many of the programs presently in the Ministry of Community and Social Services will be amalgamated—merged, in other

words—with the Ministry of Health programs and that in that way you will achieve your \$17.4 billion target and be able to stand up and say, “We did what we said we would do.”

Frankly, I don't put that past you, so I am concerned enough that this might be your intention. But if you are honest and straightforward and you think I'm wrong, you're not going to do that, and Elinor and Frances and Gerry and John and the rest of us sitting here on committee have no reason to be concerned that you're not going to live up to your commitment of \$17.4 billion and that you're going to live up to that commitment with the existing dollars that are in the sealed envelope of health expenditures under the Ministry of Health today, then you should have no problem with this amendment, which is just a recording of savings and reinvestment against which you can be held accountable.

I'm not going to get into why I am cynical or concerned or worried or why I believe you might try to manipulate those figures in a way that would test further your integrity and the commitment that you made, because I don't frankly want to antagonize you, in the hopes that you will support this amendment. So I'm going to just ask you if you will consider a reasonable amendment that will bring some accountability within an existing vehicle. You've said no to the committee; you've said no to accountability to the House. What we're asking for here is just, in the annual report of the Ministry of Health, that you outline the expenditure savings and the reinvestment that you've committed to. It shouldn't be a problem. I expect support for this amendment and for the amendment to the amendment as placed by Ms Lankin.

1430

Mr Gerretsen: That's precisely the point that I was going to make—that is, that the amendment is very simple, namely, that in your annual report you set out those reinvested savings.

I just have a number of quotes here that I would like to read into the record, because they're very plain, unequivocal and not subject to any kind of unusual interpretation.

The first quote is, “There will be no cuts to health care funding by a Harris government.... This is our first and most important commitment.” That was in your own party document, the health backgrounder, on May 3, 1995. All this amendment is doing is living up to your first commitment to the people of Ontario.

Next, in an April 1995 newsletter, it states, “The budget for health care, currently at \$17.3 billion”—now it's \$17.4 billion—“will be sealed, and we're the only ones to make this financial commitment to health care.” The other two parties made commitments, but even according to your own document, their commitment wasn't as unequivocal, as straightforward. You're going to spend \$17.4 billion on health care. All this amendment is saying: “We're changing the status quo, which has to be changed. We're finding new ways in which money can be reinvested in the health system. Let's at least have an annual report on it as to how that's being done.” You shouldn't have any problem with that at all. It's straightforward and unequivocal.

Next, another quote: “Health care professionals will have a Mike Harris guarantee that savings they generate through their own initiative will not be siphoned off into other non-health-care-related programs. Local health care communities will share in any savings identified locally for reinvestment in community priorities.” This was also in the health backgrounder on May 3, 1995.

I've already spoken about this earlier today, but this deals with the whole notion that any savings that are being found in a local health care community ought to be reinvested there. That has now, by extension, been taken to mean all the health care communities within this province. All this resolution is doing, this amendment and the amendment to the amendment, is basically putting into practice exactly what Mike Harris said on May 3.

Next, on May 25, 1995—we're getting closer to the election—in the PC response to the Ontario Association of Nonprofit Homes and Services for Seniors, it states, “Health care funding will be maintained at current levels.” Next, “Any savings in health care will be reinvested in front-line services.”

It simply cannot be any simpler than has been stated in those five or six quotes, very simple sentences, very direct, and subject, in my humble opinion, to just one interpretation. What I'm going to ask the members of the committee to look at is that all this amendment does is simply put into practice the direct promises that you made to the people of Ontario.

The Chair: Any further comment? Okay. We will call the question on the amendment to the proposed new section 1.5, as proposed by Ms Lankin. Shall the amendment be added to the section?

Ayes

Caplan, Gerretsen, Lankin, Phillips.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: Shall the new proposed section 1.5 as proposed by Mr Phillips carry?

Ayes

Caplan, Gerretsen, Lankin, Phillips.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: Section 1.5 shall not carry.

I understand, Mr Phillips, that you have a proposed new section 1.6.

Mr Phillips: Yes. This is section 1.6 of the bill. I move that the bill be amended by adding the following section:

“Maintain law enforcement and justice budgets

“1.6. No provision of this act or any of its schedules shall be interpreted to contravene the pledge to guarantee funding for law enforcement and justice, as stipulated in the Common Sense Revolution document released by the Progressive Conservative Party on May 3, 1994.”

The Chair: Thank you, Mr Phillips. You have the floor.

Mr Phillips: Just to speak briefly on this, I think the government members can appreciate that what we're doing here is trying to find out whether what you said in the Common Sense Revolution, when you ran, is what you mean. Bill 26 is, according to you, the document that allows you to implement the Common Sense Revolution.

We now, though, have found that you don't support putting the taxpayer pledge that you made into the bill. You don't support prohibiting the user fees that you said you would prohibit. You don't support reinvesting health care funding as you said you would do. Now we're into an area where you've given a commitment to Ontario that you are going to maintain funding for law enforcement and justice.

That was one of the cornerstones of your campaign and certainly people are concerned about safety and concerned about safe communities and they thought you actually meant what you said in it. Very simply, if you meant what you promised, this amendment ensures that the bill carries that out. If you didn't mean it, you'll turn it down.

This is the fourth of those big promises you've made. You've rejected three of them so far. This is the fourth on law enforcement and justice that I assume you believed when you ran, believed when you got elected and we'll see whether you believe it now.

The Chair: Thank you, Mr Phillips. Mr Silipo, followed by Mrs Caplan.

Mr Silipo: Briefly as well, let me just say that this really, as Mr Phillips has said, was one of the areas that the Tories and Mr Harris were quite clear in, that they would protect from any cuts. We've seen what's happened to their promise on health care—no cuts there. There was \$1.3 billion in cuts. Classroom spending is going to be affected. That was the other area they said they would protect; \$400 million being cut just this year alone. That's going to affect the classroom. At least this one, there is an opportunity here to see if in fact the government wants to redeem itself.

Clearly from the anger that we saw reflected in the hearings on this one, particularly from the police associations and police officers across the province, it seems to me that whether they want to admit it to us or not, that the government members must be reeling from seeing individuals like that who were quite clear that they, by and large, supported this government towards its election, feel—to use their words, not mine—betrayed by the actions that this government has taken to cut funding to municipalities which includes cuts to funding to police services and not to speak of all of the changes that we know are coming with respect to the courts side of the justice system and the cuts that will ensue there.

This, I think, is a very sensible amendment which certainly will support, which says you made a promise that you would protect these areas from cuts. Let's make sure that this bill gets implemented in a way that maintains that promise.

Mrs Caplan: I held forums in my riding during 1994 on safety, and the message from my constituents was very clear. They were worried about their personal safety.

They wanted and were worried about the safety of our streets and they expected, I believe, that when Mike Harris told them that there would be no cuts to policing services, that those were priorities for his government. He had set out very clearly three priorities: health care; classroom education; and policing services, law and order. Those were three priorities that my constituents—many of whom voted Conservative, and many of those who voted Conservative did so because they believed that promise.

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We have Bill 26, and we're also seeing a lot of very significant actions being taken that are going to affect law and order and justice. I'm already receiving some questions from my constituents, who are equally concerned if not more concerned today because of the initiatives of the government about what will happen to policing services in our community, and I honestly don't know that I can give them any assurance, given the numbers of things that Harris and Wilson and Eves and Runciman said during the election and before and some of the actions that are taking place now.

But when I hear from police associations that Bill 26 is not going to protect policing services and that it is going to affect community policing and police services and it's going to have an impact, a potentially negative impact, on our streets, where people are already concerned for their personal safety and the safety of their families, then I believe this amendment is essential. And I know the government members are going to support this one, because they would want to give the same assurance to their constituents that I would like to give to mine, and that is that Mike Harris meant what he said when he said he was going to protect police budgets.

I'm not going to speak at length to this, but I just want to tell the Conservative members that I'm sure they heard the same thing from their constituents when they knocked on the door and they had their consultation over the development of the Common Sense Revolution, and they would want to assure their constituents, as I would want to assure mine. Since we've heard from police associations and others who are concerned about the impact of Bill 26 on public safety and the safety on our streets, because it will have a negative impact on police services, I know that they'll want to support this amendment so they can go back to their constituents and say: "It's in the law. We now have an amendment that says that all the guarantees of funding for law enforcement and justice are going to be kept. It's now in Bill 26. You don't have to worry about it." It says to the police associations: "Don't worry. Bill 26 responds to the concerns that you raised at committee." You can also tell people you meet when out you're on the beat and in the communities and having contact with people who care about good law enforcement that they don't have to worry about this any more. So I look forward to this amendment passing.

Mr Clement: I feel compelled to speak against the motion.

Mrs Caplan: Against?

Mr Clement: Yes, against. The motion, from my perspective, is unnecessary and redundant. In fact, we as a government believe that we have evidenced our com-

mitment to public safety. We are very proud of the Victims' Bill of Rights, which was passed in the recent session. Both the content and the message of that particular piece of legislation is that the victim does count and not all the rights rest with the criminals. Secondly, we have made at least one announcement, possibly more, relating to the equipment that the police need in order to do their jobs properly, to fight the armed and dangerous criminal element. And we believe we have made our roads safer from drunk drivers through our suspension announcements. I don't think we have to be lectured by the opposition, quite frankly, as to our commitment to public safety, and I wish to restate our commitment to that point of view here and now for the record.

There's nothing in Bill 26 which deals with cuts to provincial funding in this area.

Mrs Caplan: So why are the police opposed?

Mr Clement: The issue, of course, and what Bill 26 is partially about, is giving the municipalities the tools necessary so that they can deal with their internal budgets in a responsible manner so that we can get out of the spiralling of debt and debt servicing that takes money away from the services that Ms Caplan feels so emotional about.

I feel the same emotion that Ms Caplan does about the need to keep our streets safe for men, women and children, but our streets will not be safe if we continue to spend \$1 million more an hour than we take in. That means more and more money going to interest on the debt—going to foreign bond holders or whatever debt holders we have that are currently in the system—will only grow as a result of irresponsible spending. That means that each year that we fail to deal with this issue, and deal with our transfer partners, quite frankly, on this issue, means that more and more money comes out of the services that the opposition and we so cherish.

I would just say for the record that, as we know, it's the police service boards that craft the budgets for the police services in their local communities and that there are certain standards that are expected that are enshrined in the Police Services Act. We feel comfortable that Bill 26, should our amendments carry the day, will be an improved bill which will enact the necessary savings that the government of Ontario has to enact in order to deal with our deficit situation but will allow the local governments the opportunity to decide what their priorities are, which should be done, quite frankly, at a local level.

Mr Gerretsen: On a point of order, Mr Chair: I don't think Mr Clement should mislead the public to think that local governments control police boards or police services committees.

Mrs Caplan: Exactly.

The Chair: That's not a point of order.

Mr Gerretsen: If anything, the minister should have—

The Chair: It's not a point of order.

Mrs Ecker: He didn't say that.

Mr Gerretsen: He did say that. He talked about local powers and police services boards.

The Chair: Mr Gerretsen, it is not a point of order. Mr Phillips, did you want to—

Mr Gerretsen: He's misstating the facts.

Mrs Caplan: Tell the truth and correct the record.

Mr Clement: I'm sorry if you took it that way.

The Chair: Mr Clement, you had finished, had you not, or are you—

Mr Clement: Well, just as an addendum, just to correct the record—

The Chair: Thank you very much. Did you want to finish up?

Mr Phillips: Has everyone else spoken?

The Chair: Yes, everybody else has spoken. Did you want to finish up?

Mr Phillips: Just to wrap up, when the member said he doesn't want to be lectured by us, actually we're just quoting the police. The police were lecturing you, not us. Mr Silipo's comments were—he was simply reporting what the police reported to us, which was that they feel betrayed by this bill—that wasn't us, that the association of police of Ontario—because you made some very firm commitments to them before the election. They would be the first to acknowledge you probably had 70% or 80% of the vote of the police organizations because you made that commitment. So if you're mad at somebody for saying it, you're accusing the wrong people.

The other thing I'd say is that when the member says they've got to deal with the enormous deficit problem, as I think we all know, the intent of this bill is to find the \$5 billion for the tax break. You're going to cut \$8 billion of spending. You're going to take \$3 billion of it to reduce the deficit and \$5 billion goes to the tax break.

We could understand it. I think the public could understand it. If this were an all-out assault on the deficit and this is why everybody's got to sacrifice, we could understand that. I think people could say, "All right, we know we've all got to do our share."

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But the problem is, for all those people out there who are being asked to make the cuts to get to the \$8 billion, they should all be aware that you're going to take \$5 billion of that for the tax break. By the way, those aren't my figures; those are your figures. This is called the "Direct Fiscal Impact of the Common Sense Revolution," and you can see the top line is, "Tax Cut, \$5 billion."

I just wanted to get those two things on the record and then close, Mr Chair, because I know we want to move on, by saying that this is the fourth of what I think were the cornerstones of the Common Sense Revolution. So far you've rejected putting in legislation three of them, three of your big promises. This is the fourth that you're going to reject, which is that you were going to maintain spending—these are promises you made. You're going to reject putting in this legislation, your cornerstone legislation, the commitment on spending for law enforcement and for safety.

The Chair: Mr Phillips has proposed a new section 1.6 to the bill. Shall the section carry?

Ayes

Caplan, Gerretsen, Lankin, Phillips.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The section does not carry.

Mr Phillips has a proposed new section 1.7.

Mr Phillips: This is section 1.7 of the bill. I move that the bill be amended by adding the following section:

"Aid to seniors and disabled

"1.7 No provision of this act or any of its schedules shall be interpreted to contravene the pledge to guarantee benefit levels for seniors and the disabled, as stipulated in the Common Sense Revolution document released by the Progressive Conservative Party of Ontario on May 3, 1994."

Again, just so the public and the rest of us are all aware of what these five amendments were designed to do, if this bill is designed to implement the Common Sense Revolution, what we've tried to do in the five amendments we've proposed is to put in the legislation your five big commitments. Commitment number one was the commitment you made in the whole area of taxation and balancing the budget. Commitment number two was on the user fees. Commitment number three was on the health care area. Commitment number four was on law enforcement—that was your fourth commitment—and the fifth one was your promise to the seniors and people with disabilities in this province that you would ensure that your funding there would not be interrupted.

I will say once again that I think you got elected with a very large majority because of those five big commitments. There's no question of that. So far, you have chosen to repudiate four of them, and this is the fifth, your commitment to the seniors of this province and people with disabilities.

So that's the intent of this amendment, and I would hope we would find at least a few of the Conservative members who would decide they might live up to this commitment.

Ms Lankin: Let me say that we will be supporting this amendment. I suspect that it is quite clear to all in this room and all watching at this point in time that the government will continue to vote against its own commitments, that it intends to, I guess, leave itself the flexibility to break more promises as time goes on.

This was a clear commitment, it's written in the Common Sense Revolution, and yet already in Bill 26 we see a violation of this commitment with the introduction of copayments on drugs for seniors and persons with disabilities who are under the Ontario drug benefit program. I've spoken at length already with respect to that issue and I don't intend to repeat that.

I think it's a shame that the government members just blindly vote against all these amendments when they have been carefully worded to not take powers away from government, not insist on anything beyond accountability, accountability to your own commitments and promises to the people of Ontario, which you have today, time after time after time, voted against. I think that is an eloquent statement of the state of affairs of the government of Ontario and the state of affairs of Mike Harris's commitment to the people of Ontario, and I don't think much else needs to be said. We'll be supporting this.

Mr Clement: Let me speak first generally to the point Mr Phillips has raised about his interpretation of the commitments we made in the Common Sense Revolution

and our ability to meet those and our commitment to those, and reaffirm for the record that we are absolutely committed to the Common Sense Revolution's goals and the methodology for getting there. We believe that we are on track in implementing the Common Sense Revolution, which was a revolutionary document because it set out, well before the election, the platform of a political party. We took some hits from the opposition, who scoffed at it and who ridiculed it for fully one year before the election, but we believed it was important for the public to understand what they were getting when they elected a Progressive Conservative government in Ontario. So we're quite proud of that document and we're quite proud at the speed with which we have decided to implement those, not only just because it fulfils election commitments but because, quite frankly, the prescriptions are absolutely necessary for Ontario to regain its leadership role in Canada as an economy and as a society.

I would note for the record then that section 1.7 we believe to be unnecessary and irrelevant to Bill 26. The reference to the Common Sense Revolution deals with our commitment to ensure that welfare reductions would not impact seniors and the disabled who were on social assistance and our commitment to transfer those persons to a different system of social assistance divorced, eventually, from the welfare system. That was the reference and the context in which that commitment was made, and we're sticking to it. With respect to the legislation at hand, I don't believe there are any changes to the social assistance system that were contemplated to be part of Bill 26 and so I fail to see the relevancy of this section.

The Chair: Any further discussion? Mr Phillips, did you want to wrap up?

Mr Phillips: Just to quickly wrap up, actually we did kind of scoff at the Common Sense Revolution when it came out. I remember the day it came out, actually, we were meeting with a group of economists and financial people. I brought it back in and I said: "They've released this document calling for a 30% cut in personal income tax. What do you think our response should be?" They said: "Well, that's ridiculous. It fiscally cannot be done. Let it die of its own weight." Well, it obviously didn't die of its own weight, and you're there and I'm here, but I—

Mr Sampson: So much for those economists.

Mr Phillips: They will still be proven right. I'm with them; it's just that it may take longer.

So I did scoff at it, but I think people will in the final analysis recognize that it can't be done, and I think we've proven it can't be done today, because we've now had four amendments, and we've got the fifth amendment coming up here, all designed to see whether you're going to live up to your commitments, and now you're backing off them.

I think those people will be proven right. It's just that it's a little late now, because you're there and we're here, and you're bound and determined to move on. I hope the public will appreciate that this will be fifth of these amendments designed to hold you accountable and you've decided to reject all five of them.

The Chair: Mr Phillips has proposed a new section 1.7 for the bill? Shall the section carry?

Ayes

Caplan, Cooke, Gerretsen, Lankin, Phillips.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The section shall not carry.

We now move on to section 2. Are there any amendments to section 2?

Ms Lankin: I just want to indicate I had tabled an amendment to add a section 2.1 and I would withdraw that at this time.

The Chair: Any questions on section 2? Shall section 2 carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Cooke, Gerretsen, Lankin, Phillips.

The Chair: Section 2 carries.

Are there any amendments to—

Ms Lankin: Sorry, this is just a question of procedure and order so I understand how we do this. We were voting on an amendment proposed by Mr Phillips, section 1.7 of the bill, but did we vote on section 1 of the bill?

The Chair: Section 1 originally we voted on. It stood by itself and then there were several new sections proposed.

Ms Lankin: Okay, thank you. I appreciate that.

The Chair: Is there any amendment to section 3 of the bill?

Mr Phillips: Let's move quickly through this.

I move that section 3 of the bill be amended by striking out "Savings and Restructuring Act, 1995" and substituting "User Fees and Concentration of Powers Act, 1995."

I'll just speak very briefly to it. I was amazed at the number of people who came supporting the bill, but they essentially were supporting the title of the bill and then proved to have—

The Chair: Just a second, Mr Phillips. I missed a note here. That amendment is out of order because there have not been amendments to the bill of such a nature as to render the short title as set out in the bill inaccurate or to require it to be changed.

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Mr Gerretsen: Yes, but the title of the bill is inaccurate.

The Chair: Any further discussion on that?

Ms Lankin: Would you explain that for us?

The Chair: There have not been amendments to the bill of such a nature—

Mrs Caplan: It doesn't have to reflect that.

The Chair: Can I get a chance to answer Ms Lankin's question, please. There have not been amendments to the

bill of such a nature as to render the short title as set out in the bill inaccurate or to require it to be changed.

Ms Lankin: May I ask you how you come to that conclusion? This is procedural, I understand, but how do you come to that conclusion when we haven't in fact gone through the whole bill and dealt with all of the amendments yet?

The Chair: We haven't gone through the bill, we haven't gone through the schedules yet. There have been no amendments to the bill to change the nature of it so that the title is not appropriate.

Ms Lankin: But if the argument is that the bill was misnamed to begin with, and there is an argument to be made that the name of the bill, short or long, didn't accurately reflect the contents of the bill, why are we not allowed to put that case forward and to argue that? Your ruling presumes a correctness in the naming of the bill in the first place.

The Chair: I guess it does. Why don't we stand it down?

Ms Lankin: I've got a problem with that, Mr Chair.

The Chair: I realize you do, but the process we follow is that the ruling that the Chair makes regarding the appropriateness of a motion cannot be challenged.

Ms Lankin: I do understand that, but I also know that you are very fair in the chair and you will reflect upon the words that you are using. You've just agreed that your ruling makes an assumption that there is correctness in the content and implications of the title of the bill. In fact, the amendment that is proposed challenges that very issue and that shouldn't be reliant on the number of amendments or not that the government chooses to pass with respect to the bill itself.

The Chair: May I correct myself?

Ms Lankin: I always appreciate it when you do that, Mr Chair.

The Chair: The ruling of the Chair is not debatable, but it is changeable by majority vote.

Ms Lankin: I would ask for unanimous consent to entertain Mr Phillips's motion.

Mr Maves: On a point of order, Mr Chair: Because the complaint has to do with the title of the bill and we've already determined that we will be discussing the title of the bill at the end of this process, would they not be content to have this then discussed at the appropriate time?

The Chair: Basically this is the short title of the bill. The long title of the bill we discuss at the end. This is the short title of the bill we're talking about.

Ms Lankin: We'd be prepared to do both at the end.

Mrs Caplan: Happy to defer.

Mr Silipo: We could, by unanimous agreement, do that, could we not?

The Chair: So we want no more debate on this issue unless there is consent or a motion to debate the ruling of the Chair. Are you making a motion that we debate Mr Phillips's motion?

Mr Silipo: No, I want to pick up on what I think was a sensible suggestion made by the Vice-Chair of the committee, which is that this is not the kind of section we should be spending a long time on. I think everyone understands that. It would probably be more sensible to

just defer this section until the end when we are dealing with the overall—

The Chair: So are you asking for unanimous consent to defer this section to the end?

Mr Silipo: Yes, I'm asking for unanimous consent to do that.

Mrs Caplan: You don't need unanimous consent to defer.

The Chair: Hearing no unanimous consent, the Chair has ruled and the ruling will stand.

Shall section 3 carry?

Ayes

Clement, Ecker, Hardeman, Johns, Sampson, Tascona, Young.

Nays

Caplan, Cooke, Gerretsen, Lankin, Phillips.

The Chair: Section 3 carries.

As stated earlier, we deal with the long title to the bill at the end of the process, so we now move into the schedules.

Schedule A. Are there any amendments to section 1 of schedule A? Have you got a new one, Mr Cooke?

Mr Cooke: On section 2.

The Chair: So there are no amendments to section 1?

Mr Cooke: I've got section 2.

The Chair: Shall section 1 carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Gerretsen, Phillips.

Mr Cooke: This is actually something I'm prepared to support.

Clerk Pro Tem (Mr Todd Decker): Mr Cooke votes yes.

The Chair: Okay. Section 1 carries.

Are there any amendments to section 2?

Mrs Caplan: Are we not voting on the NDP amendment?

Mr Cooke: My amendment is schedule A to the bill, subsection 2(1).

I move that the definition of "employer" in subsection 2(1) of schedule A to the bill be amended by striking out "that does not carry on its activities for the purpose of gain or profit to its members or shareholders" in the second, third and fourth lines.

The Chair: Mr Cooke will be the first to speak on that.

Mr Cooke: Just an explanation of the amendment. What we would like to see is that with the involvement the province has with for-profit nursing homes, for-profit child care centres and the dollars that go into those facilities—and we support the concept of sunshine on salaries—if the government supports that for the non-profit sector, it only seems appropriate that it would support it for the for-profit sector for businesses or

operations or government services that are identical to the non-profit sector. We support sunshine for public sector wages over the \$100,000. We're just asking that the same rules apply to the for-profit sector in human services.

Mrs Caplan: I would like to say that I believed this was what we were voting on. Given where we are in the bill, it had been my intention, and our intention actually, to support section 1 of schedule A. I ask that we take that vote again. I thought we were voting on a different section and would appreciate the opportunity to correct the record. That is a courtesy which is extended, especially if you're in a complex piece of legislation.

The Chair: I think I made it fairly clear we were voting on section 1 of schedule A. The vote has been taken, so the vote will stand as taken.

Mr Cooke: Oh, come on, Mr Chair. If the members are suggesting that there was—

The Chair: You voted on it. It's on the record.

Mrs Caplan: I just ask that we take the vote. It will take about 30 seconds. It's normal procedure, courtesy of committee, that if a member notes an error, we just ask the vote be taken again to correct the record. You can't object to that. That's common courtesy.

Mr Cooke: Come on.

The Chair: Mr Silipo.

Mr Silipo: Dealing with this issue, Mr Chair?

The Chair: It's dealt with.

Mr Cooke: I don't believe it.

Mr Silipo: I find it strange, Mr Chair, when people indicate that they thought they were voting on a different section, that you wouldn't allow them to correct the record.

Anyhow, speaking to the amendment that we've put, I think the other important element to add here is that what we're talking about—and this is the reason why we support also very much the overall thrust of schedule A. This is one of the few sections that certainly we've said from the beginning we do support.

We are talking here about disclosure of public funds. We are talking about, in instances where people who receive, groups that receive all or a significant amount of their moneys from the public purse and have employees who earn over \$100,000, that the disclosure of those salaries ought to be done. What we are trying to do with our amendment is to correct one mistake that we believe exists in that, which is that it would exempt for-profit operations not just by virtue of being for-profit, because we're not looking here to capture all of the for-profit groups, but we're talking about for-profit operations that receive that same amount of funding from the government coffers as do the non-profit groups.

For example, we know that there are many nursing homes that are privately run that receive the same proportion, in some cases even more, than non-profit nursing homes from the public purse. We think in those instances the same rules should apply, that is, that the salaries of employees who earn over \$100,000 ought to be disclosed, and so on.

Let there be no mistake that that's what we're adding by the amendment. We're saying, apply the same rules in the for-profit sector that the government legislation proposes to apply in the non-profit sector, all under the

caveat of the way they receive the amounts of funds from public funds as set out in the legislation. We think that's something that improves the disclosure provisions and we hope the government will support it.

1510

Mr Sampson: I can understand where my honourable friend is coming from with respect to the amendment, but I think we need to sit back a bit and take a look at what the purpose of this particular schedule is. It's to encourage the disclosure publicly of information with respect to compensation for those individuals who are being compensated directly by funds expended out of the public purse. To widen the net, so to speak, or make it finer, or however, and catch public corporations in that particular definition you're proposing would do more than that. It would capture individuals who are employed and compensated by funds raised privately.

Private corporations are responsible solely to their shareholders. That's the nature of the private corporation setup. Public corporations are responsible to the public purse, and that's what this particular schedule is trying to do: to establish that responsibility, the reporting requirements with respect to how the moneys are used, and more specifically, as it relates to this schedule, how the moneys are used in the compensation of individuals.

It would be inappropriate, in my view, to have a piece of legislation on the books that would, for instance, capture a large multinational corporation and force it to disclose salaries for activities that were not related whatsoever to the expenditure of government moneys. If they got a government grant for X amount of dollars, it could potentially capture them by the scope of the net that you've carved out here. I don't think that's appropriate. It's certainly not the intent of this particular schedule.

This schedule was designed to ensure that there is a level of accountability for the moneys that are drawn from the public purse and expended by public corporations or public entities in the delivery of a certain level of service. That's what this particular schedule is doing. The wording is, in our view, appropriate enough to achieve that objective. There's no reason, I believe, to change the scope of the definition here to try to capture the publicly traded or private corporations.

I would put to you also that the publicly traded corporations have their own reporting requirements with respect to salary in another jurisdiction. So I gather by your amendment you're really trying to get at private corporations as opposed to publicly traded corporations that might receive money, but the emphasis of this initiative is on public sector accountability to the taxpayer. That's what it is and that's what it's doing.

The Chair: Mrs Caplan, followed by Mr Cooke.

Mrs Caplan: The concern I have with this amendment to schedule A is that I think it is a slippery slope of government intervention into all private corporations. I think that's wrong as far as that kind of regulation is concerned. I very much support the disclosure rules for publicly traded corporations where it does require the disclosure to the shareholders of the salaries of the executives of that organization. I also support disclosure in the public sector of salaries, and the broader public sector as well, which is what schedule A is about.

But while I think the argument is a reasonable one to make about the same services being provided, I am very concerned that it's a very small step to then getting into regulation of businesses and requiring disclosure of corporations that are delivering similar services not funded by the public purse. That's my concern with this amendment and I will be voting against it, although I do support disclosure in publicly traded corporations, I support disclosure in public agencies, boards and commissions, the broader public sector, from the so-called MUSH sector of the municipalities: universities, colleges, hospitals and school boards. I think that that is very appropriate, but I'm always concerned about where we draw the line on that sort of thing.

I think the proposal that is in schedule A for disclosure from the broader public sector is an important first step and I would not want to see us go beyond that at this time.

Mr Cooke: The difficulty that I have with that line of argument or that of Mr Sampson is that we're talking—let's give a real example: a non-profit nursing home and a for-profit nursing home. If the administrator has responsibilities—it'd have to be a fairly large one, I guess, but if the administrator is making more than \$100,000 in the non-profit nursing home, under your schedule A that will be published. If that same nursing home were for-profit and the administrator got exactly the same wage, it wouldn't be published. I guess then you have to start questioning what is the purpose of sunshine legislation.

I support it because I believe in public accountability for those who are getting public funds, whether they're for-profit or whether they're not-for-profit. I think by voting against it, what is being demonstrated here is that you can go and make your arguments of privatization and say that privatization saves money. There'll be no comparisons with the not-for-profit sector and you can continue to bash the not-for-profit and public sectors and to praise the for-profit and private sectors, and you have completely different rules to measure them by.

If you believe in public accountability for the expenditure of public dollars, then it should not depend on whether it's a for-profit or a not-for-profit. It should be for those services. The argument that you're talking about employees who are directly paid by the government, that's not the case with universities, that's not the case with hospitals, that's not the case with child care centres or the not-for-profit sector.

They're not paid directly by the government, and in fact a lot of those services have a substantial amount of their money that doesn't even come from the provincial government. Universities get a lot of their money, close to 30% now, from tuitions. They also get lots of money through private fund-raising, and so do hospitals. So those arguments don't wash.

If the wording of the amendment is inappropriate, then I'm obviously prepared to look at other wording, but all we're saying is that when you have exactly the same funding arrangements with a for-profit system, then the same rules should apply in terms of sunshine on salaries that are in excess of \$100,000 for those services, not for the corporation that might have a president of the corpor-

ation who isn't even delivering that particular service. I'm talking about that particular service. Whether it's the administrator of the nursing home, whether it's the administrator of a chain of child care centres, that's the comparison that we're looking at.

The Chair: Any further discussion on the amendment to subsection 2(1)?

Shall the amendment carry?

Ayes

Cooke.

Nays

Caplan, Clement, Ecker, Gerretsen, Hardeman, Johns, Maves, Phillips, Sampson, Tascona, Young.

The Chair: The amendment does not carry.

1520

Mr Gerretsen: On a point of information: All the sections in this bill probably amount to well over 2,000 to 3,000. I haven't counted them, but I'm sure they do. I think some of the confusion that arose with respect to the discussion on section 1 was the fact that most of us were dealing with the amendments at that time. Would it not make more sense, just to speed the process along, to deem all those sections that are not in dispute to either have been carried or defeated? We can have one vote on all that and just deal with the amendments, either government, NDP or Liberal amendments, of which you have about 300 to 400 in total, rather than going through every section, when obviously on an awful of the sections we're either going to disagree as a group from one side or the other. It's just a suggestion to speed the process along.

Mr Cooke: There's a difficulty with that. Just because there's not an amendment to a particular section doesn't mean we're either opposed or in favour. There may be some there are no amendments to that we'll be voting in favour of or that we'll be voting against. I'm not quite sure how you do that, since they will all be dealt with differently—by the Liberals I assume, too.

The Chair: The only way we could entertain that would be with unanimous consent and obviously there are reasons—Mr Cooke has put forward some reasons he wouldn't be prepared. So we will be going through it piece by piece.

Are there any further amendments to section 2? Is there any further discussion on section 2? Shall section 2 carry? Carried.

The Chair: I note no amendments on section 3—

Mrs Caplan: Mr Chairman, can we not have a vote on schedule A, just do all of schedule A at this time?

The Chair: There are no amendments to sections 3 through 10. Shall sections 3 through 10 carry? Carried.

The Chair: Shall schedule A carry?

Ayes

Caplan, Clement, Cooke, Ecker, Gerretsen, Hardeman, Johns, Maves, Phillips, Sampson, Tascona, Young.

The Chair: I'm having trouble keeping up with this change in pace.

Mr Sampson: As we proceed to schedule B, if I could, I'd like to ask Ministry of Finance staff to join me.

Mr Gerretsen: The parliamentary assistant yesterday told half of them to go away, that he could handle it himself. Do you need help all of a sudden?

Mr Sampson: Another day, another dollar—or \$20, as Mr Phillips was saying.

The Chair: The first amendment to schedule B that has been filed is in section 6. Therefore, shall sections 1 through 5 carry? Carried.

Are there any amendments in section 6 of schedule B?

Mr Sampson: I have one. I move that subsection 43.2(2) of the Corporations Tax Act, as set out in subsection 6(1) of schedule B to the bill, be amended by striking out "this act, other than tax payable for the year under this part after making all deductions claimed under sections 39, 40, 41 and 43" in the third, fourth and fifth lines and substituting "parts III and IV."

Mr Gerretsen: I would like a detailed explanation of that amendment. I wonder if the parliamentary assistant could oblige.

The Chair: I'm sure he can.

Mr Sampson: Thank you to the ex-mayor of Kingston. I appreciate being asked. I would have thought that somebody who had been the mayor of Kingston for so many years and on AMO for so many years would have understood this, but—

Mrs Caplan: Could we have a vote right now just on whether anybody understands?

Mr Sampson: This is a technical amendment. One of the problems with the current wording is that there was a potential that the innovation tax credit and the mining tax credit, as proposed under this schedule, would have doubled up, so to speak, so what we're doing is trying to order these credits to prevent the unintentional double reduction of the credits in the year they're earned if corporate minimum tax is applicable. I will pass the floor to my colleague from Finance who knows the tax act a shade better than I do.

Mr Gerretsen: That's satisfactory. I knew that, but I was just checking to see if he knew.

The Chair: Any further discussion on this proposed amendment? Shall the amendment to subsection 6(1) carry? Carried.

Are there any further amendments to section 6?

Mr Sampson: Mr Chairman, guess what? I have one.

I move that subsection 43.2(6) of the Corporations Tax Act, as set out in subsection 6(1) of schedule B to the bill, be amended by inserting "sub-subclause 43.1(2)(a)-(ii)(A) and" after "For the purposes of" in the first line.

The Chair: Mr Gerretsen, did you want an explanation on this one too?

Mr Gerretsen: No, no.

Mr Sampson: If he wants an explanation, I'll just have Hansard read back my lines for the previous amendment.

The Chair: Shall the amendment proposed by Mr Sampson carry? Carried.

Any further amendments to section 6? Any further discussion on section 6? Shall section 6, as amended, carry? Carried.

Any amendments to section 7?

Mr Sampson: Surprise, surprise, Mr Chairman, I have an amendment to section 7.

I move that the French version of subsection 43.3(9) of the Corporations Tax Act, as set out in subsection 7(1) of schedule B to the bill, be amended by adding, after "dépenses" in the seventh line of item D, "en capital."

Mr Cooke: Can you read the whole amendment en français?

Mr Phillips: And you people didn't want hearings.

The Chair: Is there any discussion on Mr Sampson's amendment? Shall the amendment carry? Carried.

Mr Silipo: Mr Chairman, does this mean that all the other sections that were amended in English only remain as they were in the French version?

The Chair: I assume it does.

Interjection: No, it doesn't.

The Chair: Any further amendments to section 7?

Mr Sampson: I move that section 43.3 of the Corporations Tax Act, as set out in subsection 7(1) of schedule B to the bill, be amended by adding the following subsections:

"Application rule

"(17) A corporation shall be considered not to be entitled to claim a deduction under subsection (1) for a taxation year for the purposes of determining an amount referred to in sub-subclause 43.1(2)(a)(ii)(A) or clause 57.3(2)(b).

"Same

"(18) If a corporation is entitled to claim a deduction under subsection (1) for a taxation year, any deduction allowed to the corporation for the taxation year under subsection 43.1(2) that would otherwise exceed the amount of tax otherwise payable under this part for the year shall be deemed to be equal to the amount of tax otherwise payable under this part for the year."

The Chair: Any questions? Shall the amendment proposed by Mr Sampson carry? Carried.

Any further amendments to section 7? Shall section 7, as amended, carry? Carried.

Any amendments to section 8? Any discussion on section 8? Shall section 8 carry? Carried.

Any amendments to section 9?

Mr Sampson: I move that subsection 74.2(1) of the Corporations Tax Act, as set out in subsection 9(1) of schedule B to the bill, be amended by inserting "or causes another person to provide" after "provides" in the first line of the definition of "planholder."

The Chair: Any questions for Mr Sampson on the amendment? Shall the amendment carry? Carried.

Any further amendments to section 9? Shall section 9, as amended, carry? Carried.

There have been no amendments filed on sections 10, 11, 12, 13, 14 or 15. Shall sections 10 through 15 carry? Sections 10 through 15 are carried.

Shall schedule B, as amended, carry? Carried.

This seems to be a logical place to have our afternoon recess, so we'll break for 15 minutes.

The committee recessed from 1531 to 1549.

The Chair: Okay, we're back in business. We now are at schedule C. There have been no amendments to schedule C filed with the clerk's office. Are there any amendments to schedule C? Shall schedule C carry? Schedule C is carried.

Schedule D. There have been no amendments filed to schedule D with the clerk's office. Are there any amendments to schedule D? Shall schedule D carry? Schedule D is carried.

Schedule E. Are there any amendments to schedule E?

Ms Lankin: Yes, schedule E to the bill, subsection 1(1). I'm in order to move that amendment now? Mr Chair, I'm awaiting your yes. Okay, thank you.

This is dealing with the definition of "toll device" in section 38 of the Capital Investment Plan Act, 1993.

I move that the definition of "toll device" in section 38 of the Capital Investment Plan Act, 1993, as set out in subsection 1(1) of schedule E to the bill be struck out and the following substituted:

"'Toll device' means a toll device prescribed under clause 47(1)(a.1) ('appareil à péage')."

1550

The Chair: Did you want to begin your discussion on that?

Ms Lankin: In the original construction of this piece of legislation—most people know it relates to the building of Highway 407 and financing that through the introduction of tolls on Highway 407 for new highway construction—the intent of the previous government had been that the electronic toll device to be established would be a voluntary device, available for the assessment of tolls for users of the road. But there had always been an intent that for those people who did not carry the monitor which is necessary for the electronic toll device to work—it's called a transponder, if memory serves—there would be an opportunity for others to use the road and there would be a system of photography to take photos of licence plates and a system, from that licence plate information, of billing the owner of the car for the length of kilometre use of the highway and that those photo operations would be set up at the on ramps and the off ramps.

There were essentially two options. If you were a regular user of the highway and wanted to have a transponder in your vehicle, mounted on the dash or wherever the appropriate placement is, you could use the electronic device, which would take a running total and be able to bill you on a periodic basis, or if you were an occasional user and/or wanted to remain a voluntary user of the system, the photo system would be in place.

The bill, as it is currently constructed and set forth in Bill 26, leaves some concerns that the only way you would be able to use the toll highway system—in this case we're referring to the only one being the 407—would be with the electronic device and to have a transponder. That's raised concerns about the mandatory nature of that and, second, specifically the privacy commissioner has raised concerns with this, because he believes it would require every citizen who ever had an intent to use that highway to carry a tracking device.

To quote from his letter to members of the Legislature, he indicates: "Law-abiding citizens going about their daily business on a public highway could have their comings and goings monitored and tracked by a government computer. Furthermore, there are no restrictions on the use of information collected by this electronic monitoring device."

The privacy commissioner has raised a number of concerns and we think those are valid concerns that should be taken into account. The intent was always that this would be a voluntary process and that there would be another mechanism available, and in all the design work done around the toll device, the option for the photo billing as well was in place. We believe this amendment, with some of the further discussion that will be taking place, would allow the province to implement the tolling system with either the photo system or with the electronic tracking device. We think that would meet the concerns of the privacy commissioner.

Mr Sampson: Speaking to this amendment, I need to address two items Ms Lankin has raised. One is the actual definition of a toll device. she started to speak and did have some comment with respect to the privacy issue. I want to speak to the definitional issue first.

The reason the definition is as it is, is that the offence with respect to the violation of the non-payment of tolls is in the Highway Traffic Act, in which there is a current definition of "toll device," so we must make sure this definition is consistent. That is indeed what we have here. What we have here is a schedule that deals with the administrative issues relating to the setting up of the tolls for that project in particular, but the offence is still in the Highway Traffic Act, so that's where the definition should lie, because that's the act that will be used in the event of applying a charge and acting against the charge.

As it relates to the privacy issue, there were some concerns raised by the privacy commissioner. I'm led to believe that discussions have occurred subsequent to that. I'm also told that he is now satisfied with the procedures we intend to use with respect to the toll device—the transponder, as you called it—and there has been some further communication between the commissioner and the ministry with respect to that item. I've been told that the concerns he expressed a month ago, related to this particular item, have been resolved and addressed.

Ms Lankin: I'm glad Mr Sampson pointed out the issue of the definition producing the violation and enforcement aspects under the Highway Traffic Act. I should have mentioned that. He's quite correct, and that's one of the reasons for making our amendment. This is a series of amendments which we believe, together as a package, would be necessary to deal with the privacy commissioner's concerns as he had set out last month. The effect of this particular amendment would move the issue of toll devices out of the Highway Traffic Act—Mr Sampson is right in that where there is a violation, it would require a finding of an offence—to the Capital Investment Plan Act, where that wouldn't be the case.

However, let me say that the information Mr Sampson provides to the committee with respect to the privacy commissioner's satisfaction with the government's intent in terms of the implementation of this is not something that has been shared with other members of the Legislature. The Chair will know that a group of us met with the privacy commissioner on Monday morning prior to the clause-by-clause committee meetings commencing and he indicated that certain issues had been dealt with with respect to health information and suggested that in other areas there hadn't been discussions. If there have, that

would be helpful for us to know, and I would suggest that we contemplate some process of standing down this section until we receive confirmation in writing from the privacy commissioner that his concerns have been dealt with and until we are informed in what manner they have been dealt with.

Mr Sampson: I'm afraid I can't support the standing down of that particular item. The issue as it relates to the transponder was whether the information will be used for purposes other than collecting the tolls. The intent is clearly that the information will be used for the purposes of collecting tolls and that's all. In fact, the technology will not be able to allow one to identify, for instance, me as the driver, but only the fact that my licence plate crossed a particular point of the highway at such and such a time of the day. The information will be used only for the purposes of collecting tolls. That's the point that has been raised numerous times throughout this, and I don't believe there's a reason to stand down this particular schedule to deal with that item.

Ms Lankin: Mr Chair, we are being provided information by the parliamentary assistant that the privacy commissioner has had his concerns with respect to this schedule of the bill resolved. I am suggesting to you that this is important information to be before all members of this committee. That is not information that has been shared with other members of the Legislature. As you know, the privacy commissioner is an officer of the Legislative Assembly. His reports are subject to a review by all members of the Legislature, and the concerns he raised were in fact circulated to all members of the Legislature. So it is reasonable, if the parliamentary assistant wants us to accept that these concerns have been addressed, that we are provided with that information before having to vote on this schedule. Otherwise, we are in a situation where we would have to continue to pursue our amendments to meet the concerns of the privacy commissioner as we understand them—and our understanding has not been corrected.

1600

I think it is unreasonable of you, Mr Sampson, to suggest that we shouldn't stand this down until we get that confirmation. It's a simple matter to bring it back before the committee. I'm sure you would be able, by tomorrow morning, to get confirmation from the privacy commissioner if you are correct.

Mr Phillips: I agree with Ms Lankin. Let's recognize what we're dealing with here. What is this section all about? It's all about bundling up a deal to sell a highway. That's what it's all about. It's using really advanced technology, state-of-the-art, Star Wars stuff, to sell it off. In the end, what the government wants to do is to sell 407, and I presume other highways, lock, stock and barrel. The way you sell it is that you make sure you guarantee them that they can collect all these revenues, even if you have to trample on some people's rights, even if you've got to put a lien on the house. The member is shaking his head, but that's what you're all about.

The technology is extremely advanced. This is leading-edge stuff. Make no mistake about it, the private company that owns this will have some very interesting

information at their disposal, about how often that vehicle went on or off that road, what time they were there, how many times, where they got on, where they got off, what type of vehicle. They will know who is the owner of that electronic device and how often they used it. It's very interesting information.

What the privacy commissioner says is: "Listen, this is right at the edge of privacy. You are selling off to the private sector, with this plan, access to incredibly potentially sensitive information." I can remember that one of the government's concerns about photo-radar was this very point about beginning to get into people's freedoms by photographing their cars and that sort of intrusion of privacy. This stuff goes well beyond it. I can assure you that from our party's point of view, we've got some amendments designed to ensure that there is some assurance for the public that there's some protection.

If the parliamentary assistant is saying there has been a deal struck between the privacy commissioner and the Ministry of Transportation, I'll just say that before we proceed with our amendments, we'd like to see that. I think it would be in everybody's best interests to take this section—I guess we're on schedule E now—and simply say let's stand this down until tomorrow until we get a copy of the letter. That's going to be quite fundamental to how we'll want to proceed with our amendments and how I think the NDP will want to proceed with their amendments.

I guarantee you, this issue of privacy of information around leading-edge technology is extremely important, and I would think the government members, like the opposition, will want to make sure we treat it that way.

Maybe you need a motion. Is there a motion already that we stand down schedule E until tomorrow and we get the privacy commissioner's letter?

The Chair: You can request that, Mr Phillips.

Mr Phillips: Yes, Mr Chair.

The Chair: Mr Phillips is requesting unanimous consent to stand down schedule E. Do we have that? No we don't.

Mr Cooke: Why? What is the problem?

Mr Sampson: Because we need to proceed with this particular schedule.

Mr Silipo: You're asking us to take your word for it.

The Chair: Mr Sampson has the floor, Mr Silipo.

Mr Sampson: The corporation collecting the toll is an institution under the Freedom of Information and Protection of Privacy Act, so it's governed by that act. That's clear. It's governed by the provisions of that act with respect to the information it gathers. I gather you're questioning the competency and the extent of that particular act, the freedom of information act. That's not what we're debating here. We're debating whether the information collected pursuant to this schedule and pursuant to the business of that corporation is going to be covered under that act.

Mr Silipo: On a point of order, Mr Chair: We're not debating that. We're debating a point the parliamentary assistant made, which was that the freedom of information commissioner has been assured that his concerns have been addressed. All we've asked for is the decency to have confirmation in a letter from the privacy commis-

sioner to that effect. That's all we've asked for. I don't think it's an incredible request on our part. It's simply decency and courtesy we're asking for so that we know, given that the commissioner appeared before this very committee and expressed some serious reservations about these and other sections of the bill—the parliamentary assistant is saying to us that those concerns, at least as they relate to this section, have been alleviated, but he won't give us the courtesy of letting us see that in writing. Why not?

The Chair: Mr Silipo, that's not a point of order. A request was made for unanimous consent to stand the section down. There wasn't unanimous consent. We have to deal with the section.

Mr Clement: So we can properly understand the import of what Mr Silipo is suggesting, could I suggest a recess for five minutes so that we as a caucus can discuss it?

The Chair: Is there unanimous consent for a five-minute recess? Okay.

The committee recessed from 1606 to 1611.

The Chair: Mr Clement had requested a five-minute recess. Mr Clement, did you have—

Mr Clement: I think Mr Sampson has the floor.

Mr Sampson: I want to respond to the point raised by Mr Cooke, who was looking for I believe unanimous approval to stand down this particular section. I believe the comment I made on the record was that I was led to believe the commissioner's concerns had been dealt with. I am going to try to confirm that in writing. So I will propose that we do indeed stand down this section until such time as we can confirm that one way or the other.

The Chair: So we have all-party approval to stand down schedule E? Agreed? Okay.

We now start on schedule F, amendments to section 1. The first one on the list here is the New Democrats.

Ms Lankin: With respect to schedule F to the bill, section 1, subsection 8(2) of the Ministry of Health Act:

I move that subsection 8(2) of the Ministry of Health Act, as set out in section 1 to schedule F of the bill, be struck out and the following substituted:

"Same

"(2) The members of the commission shall be appointed by the Lieutenant Governor in Council in accordance with the following criteria:

"1. One third of the members of the commission shall be members of district health councils.

"2. The commission shall include at least two members who are members of the Association of District Health Councils.

"3. The membership of the commission shall be representative of the diversity of the population of Ontario."

If I may speak to it?

The Chair: Go ahead.

Ms Lankin: As we went through the public hearings and listened to individuals coming forward, there were a couple of points made with respect to the restructuring commission, in particular the linkage that people felt needed to be built between the work of the restructuring commission and local planning that had taken place in most communities under the auspices of district health

councils, and we'll get to that issue in amendments coming up. But people also talked to the concern they had about the makeup of the commission, that the commission reflect the expertise that is in the province but also the diversity of the province.

This amendment attempts to do that by insisting that there is some district health council representation on there so that the knowledge of DHCs, not on a specific restructuring plan but about the nature of health services restructuring, about the general framework of wellness and determinants of health that have been underpinning the work of most district health councils, informs the work of the restructuring commission.

The reference to the diversity of the population of Ontario I think is important in terms of understanding both the geographic and regional differences that people bring in their perspective to these issues. We heard much of that as we went across the province and listened to presenters, as well as things like denominational issues. We heard very significant representations from the Catholic hospitals, the Jewish hospitals, the Salvation Army hospitals of a concern that the hospital restructuring commission be sensitive to the fact that there are denominational institutions and that they play a special role within the delivery of health care because of the Christian mission that they bring or the religious or denominational mission that they bring to the delivery of services and the manner in which they treat individuals from their community and others in a holistic way.

We believe it is very important, if the government proceeds to establish this restructuring commission, which we believe they will, that it reflect the reality of health planning and concerns about the direction of health care reform in this province in its makeup, in the people who are appointed to it. In a subsequent amendment we will go on to make the point that there also needs to be a linkage to the work of local health planning and restructuring reports.

I think that's all I have to say right now.

Mrs Caplan: Since this is the beginning of our discussions about very significant amendments to health policy, powers of the minister that will have huge implications on health policy, I thought that as we start talking about the restructuring commission I would take the opportunity to ask, if I could, a couple of questions of the parliamentary assistant on the policies that could flow from this, but also to be clear about what I think is appropriate.

I want to begin with a question of the parliamentary assistant. Could the Minister of Health, under the existing Ministry of Health Act, establish a restructuring commission similar to the DHCs and other advisory bodies which can be established under the Ministry of Health Act?

Mrs Helen Johns (Huron): I'll defer that to the lawyer.

Ms Gail Czukar: My name is Gail Czukar, legal counsel for the Ministry of Health, and yes, it would be possible under the Ministry of Health Act to establish an advisory body. It would be purely advisory and therefore different from the way in which this commission has been set up.

Mrs Caplan: That's a very important answer, because my contention is that the minister today, and you've confirmed, could establish a restructuring commission, that it could have the weight of his full authority. If the minister makes a decision, he could allow the restructuring commission to draft implementation plans and to begin implementation on the authority of the minister, and I'll cite the case of where this has been done in the past.

For example, the district health councils were asked for the first time when I was Minister of Health to decide where dollars should be allocated under the mental health envelope. They made those recommendations and dollars flowed exactly the way they said they should.

It's my view that a restructuring commission that made recommendations about program changes and hospital restructuring could advise the minister as to what their plan was and then the minister could say that they could implement those plans without the minister having to delegate the actual powers to the commission.

1620

Ms Czukar: Can I clarify that answer? That's quite different from the question that you asked me and that I answered. An advisory committee to the minister may advise the minister on actions which the ministry could then carry out, but the advisory body would not have the authority to implement those plans or to issue directions.

Mrs Caplan: But they could issue directions and the minister could say, "I accept their directions." In other words, if they say, "We think that in the future this should happen, that should happen," the minister could approve that and say, "Yes, I approve that," and implement it through that commission.

Ms Czukar: It would depend upon the kinds of decisions that the commission would then have to take. They would not be a body corporate as an advisory committee and therefore would have no protection from liability for any actions they took or that sort of thing.

Mrs Caplan: Protection from liability is another issue, because I think ultimately the minister should be the one who is held accountable for the decisions that the minister makes. But the purpose of this first section is the establishment of a restructuring commission. I support the notion of having a body which reviews a plan, holds a public hearing, listens to what the DHCs have said and recommends to the minister action to be taken. I believe that can be put in place under the existing Ministry of Health Act, as it exists today.

I also think it's inappropriate, as we heard from every delegation that came before this committee, for the minister to be able to delegate powers to a commission, particularly where there will be no ability to have the kind of natural justice to appeal their decision through the courts. So without any accountability, the proposal here is to set up a commission accountable to no one but the minister, exercising broad powers, where individuals and communities affected will have no right to appeal. Is that a fair categorization of what is being proposed? I want to make sure the people understand that this is what's being proposed by this part of the legislation.

Could the parliamentary assistant answer that? Is that what's being proposed?

Mrs Johns: What you have said so far is you're proposing a duplication of services, basically, because you're saying the district health council would do the planning. What we're saying is that there's planning that's being done by the district health council, but then we have to go to a restructuring commission to be able to implement the process.

Mrs Caplan: And how is that different than what you are suggesting?

Mrs Johns: How is it different than what I'm suggesting?

Mrs Caplan: You said I suggested a duplication. How is that different than—what I am saying is exactly what you're saying as far as the setting up of a commission. The difference between my proposal and yours is that the minister is accountable instead of an unelected, unaccountable body.

Mrs Johns: Not exactly, what you're suggesting. We're suggesting that the district health councils plan the proposed changes with relation to the community. We then go to a commission that does the restructuring, which has the ability to implement, has the ability to make decisions and has the power and the duties to be able to restructure the hospital commission. You are suggesting that there shouldn't be powers and duties with this commission, as I understand what you're saying.

Mrs Caplan: No. I'm saying that there should be duties but no powers. The question that I have for you—and if you could please reference to me where in this legislation it says "district health councils."

Mr Cooke: On a point of order, Mr Chair.

Mrs Caplan: This is the time to question how it's going to be established. I don't see any other point—

The Chair: Let's hear Mr Cooke's point of order.

Mr Cooke: Mr Chair, I don't want to be overly picky, but when we look at the next amendment, we do have an amendment that specifically deals with the duties and powers of the commission. Now we're talking the makeup of the commission, and I just wonder if we could try to stick to the makeup of the commission right now.

Mrs Caplan: My difficulty is that unless my concerns are addressed, I cannot support the establishment of the commission under this act because of the duties and the powers it's going to be given. So at the very beginning of this discussion I'd like to have my questions answered, because I can't vote on an amendment that deals with the makeup of a commission that I don't support.

Mr Cooke: We can deal with this in a pragmatic way. There's going to be a commission; there's only three of you and two of us. Let's just look at the makeup—

The Chair: If I might make a decision here, I understand Mrs Caplan's approach and I think it's in order.

Mrs Caplan: The other part of that is that while at the end of the day they can set up the commission, I also think this is an opportunity to discuss with the ministry and the minister, through the parliamentary assistant, some alternate suggestions they might consider if they understood, if I'm right. And I will not take too much time in doing this. Will that satisfy you?

Mr Cooke: Another way of doing this, and I think it would probably be appropriate, would be to stand down the amendment—we're at the beginning of a new sched-

ule—and not have the amendment on the floor right now but have some general questions or specific questions about this schedule. That would be appropriate and probably would save some time doing it at the beginning.

The Chair: Everybody understand Mr Cooke's request that we go back to 8(1) and deal with the committee as a body? Is that what you're suggesting, that we go back, take the amendment off the floor, stand it down?

Mrs Caplan: I don't think it really matters. I'd be happy to do it that way. I don't think it happens any faster, because we can ask the questions relating to amendments—

The Chair: Obviously there doesn't appear to be unanimous consent for that, Mr Cooke, so we'll let Mrs Caplan carry on.

Mrs Caplan: I promise not to be too much longer. I guess the point I want to make, and I'll make it again very clearly, is that I have a great deal of difficulty supporting a statutory commission that is going to have powers, especially when that commission is not accountable, where the parliamentary assistant has said there's going to be process. I see nothing in this legislation that requires any process whatever. There's nothing here that says there must be a district health council report or there must be an implementation plan; there's nothing here that requires minister's approval. So while you can say that is our intention, it's not here, and therefore I can't in good conscience support a commission that is going to have all the powers of a minister and none of the accountability.

If I were supporting the establishment of the commission, I would support this amendment. So I want to go on the record as saying that if there is a commission established at the end of the day, it should have the features of this amendment. So I support this amendment and I don't want to be in the difficult position of supporting an amendment and then ultimately not being able to support the provision.

In the interests of time I will support the amendment because I accept the fact that you're determined to have a statutory, undemocratic, unaccountable body. But I don't believe that is the necessary approach to achieve your goals, and I'll discuss it further as we go through this.

Mr Cooke: Obviously, I support the amendment that's proposed and I can certainly say, after going through the process without a commission, a process of restructuring in our community, that one of the reasons progress has been made is that it has been driven by the district health council. It has in fact had the workers involved; it's had people from the retiree community. The whole community has been involved in the makeup of the process, and advisory committees have all represented the community in which we live.

I guess what I want to know from the parliamentary assistant is whether or not this amendment is supportable and whether we can move on.

1630

Mrs Johns: Is it my turn? The government will not be supporting this amendment, Mr Cooke, and the reason we will not be supporting it is maybe double- or triple-fold.

We believe that we need to have a commission. We need to be able to have someone who moves the process

forward, is responsible for implementing it, as we were asked for in the Metropolitan Toronto District Health Council. So we believe we have to be able to put the commission forward, first of all, to answer the question. We believe that the commission has to be arm's length to allow us to be able to move quickly and expedite the process, because there are going to be 60—

Mr Cooke: Arm's length from whom?

Mrs Johns: From the minister, with an accountability to it. We believe there has to be an ability to move quickly with these because there are 60 of them coming up in the next period of time. We find the amendment prescriptive regarding appointments to the commission—

Ms Lankin: Is that your word, Helen? Jesus.

The Chair: Ms Lankin, Mrs Johns has the floor.

Ms Lankin: Come on.

Mrs Johns: You don't want to hear the rest of it?

Ms Lankin: What do you mean by that?

Mrs Johns: We find that it's too narrow. We find that there are other reasons why we have to be able to do this. For example, you're suggesting that one third of the members of the commission shall be members of a district health council. You're suggesting that two members be from an association of district health councils. We're saying that there are people who are better able in some circumstances to implement the policy, they have a better ability to be able to take the process from a planning process into an implementation process, and it doesn't necessarily have to be the district health council that comes forward. The district health council is a planning body; the commission will be an implementation process.

The Chair: Ms Lankin.

Mr Cooke: No, I think I had the floor. I was asking a couple of questions and that was the answer to one of the questions, albeit the big question is, are you going to vote for the amendment or aren't you? Let me just ask you specifically as we get to this, you do not believe then that there should be any representatives from any of the district health councils on any of these commissions because they are, what, not arm's length or they don't have the expertise? What's the problem?

Mrs Johns: I didn't say there would be no representation from the district health council. I said that the recommendation we have here of one third of the members being from the council and two members being from the association of district health councils was too narrow for us in this particular—

Mr Cooke: Nobody knows for sure, but if one third of the members from district health councils is too narrow, or whatever the word is you used, would a minimum of one fifth be—

Mrs Johns: We're saying we want the ability to be able to choose the best people to be representatives on the commission, and that may take into—

Mr Cooke: Well, you have all of the people on all of the district health councils. We haven't got names plugged in here. You'd be able to look at all of the members of that particular area's district health council. If one third isn't—and we're looking at a floor. You could say one fifth. I guess the principle here is that you're asking the district health councils to do a lot of

the dirty work in terms of doing the planning, doing a lot of the preliminary work, developing a consensus at the local community. They have the knowledge and they've put their neck on the line to do a lot of that work. Why would you then shut them out and deny, quite frankly, the commission their community expertise?

All we're saying is that there should be some link between the district health council and the commission, so if you don't like the number "one third," what would be appropriate? There's got to be some guarantee that there will be some members of the district health council on these commissions. What would the number be?

Mrs Johns: What we're saying, Mr Cooke, is that we don't want to put a number into it of how many from different areas will come. We want to be able to choose the best people—

Mr Cooke: All right, so what you're saying is that in some areas of the province you don't like the members of the health councils. So you're not going to put them on because you don't think they're appropriate to be on the commission. The principle that you want to follow is that you don't want there to be any legislative direction. You want to be able to do whatever the hell you want to do, set up a commission, give them the entire power. This thing about "arm's length": What do you mean, "arm's length from the minister"?

Mrs Johns: What we have heard along the line through all of our hearings is that what happens is, we get the planning process done and the process becomes logjammed, if you will. It stops; they're unable to implement the policy.

We have heard a number of people say that it's a very difficult process to be able to implement the process and that we need some other group of people to be able to implement rather than plan.

Mr Cooke: But I think what you're saying by "arm's length"—

Mrs Johns: We heard that constantly throughout the process.

Mr Cooke: No, but you're not answering the question.

Mrs Johns: What we're saying is that we want to make sure we have the ability to choose people who will be able to implement the process. This is a very important process.

Mr Cooke: That's not the question I asked. The question that I asked was, what do you mean by "arm's length"? I suggest that what you mean is you know that there's going to be—there should be—a lot of accountability to the minister because he is the one who ultimately—and you've already decided that there's going to be a reduction in the health envelope, so that's going to have a direct impact on the restructuring of the health care system. You want to somehow insulate yourself as a government from those very difficult decisions of which hospitals—because it's not that many years ago that your party had an experience with closing hospitals across the province. It destroyed Frank Miller as the Minister of Health.

So now you're coming up with a process that while you should be directly accountable to the people of the province, you're setting up a commission that will be isolated from the government. You'll be able to say in

the House when there's a question asked: "Hey, don't ask me the question; I'm only the Minister of Health"—

Mrs Ecker: Mr Chair, point of order.

Mr Cooke: —"There's an independent commission that we've established."

The Chair: Excuse me, Mr Cooke. Mrs Ecker has a point of order.

Mrs Ecker: I do believe that the opposition did pass a motion earlier this week asking for time to question the parliamentary assistants on the motions and what was in the legislation.

Ms Lankin: It's not a point of order.

The Chair: That's not a point of order.

Mrs Ecker: We are here to debate the motions, Mr Chair, not to have another—

The Chair: That's not a point of order.

Mr Cooke: I think that not only has the parliamentary assistant made the government's position very clear, but so has the parliamentary assistant to the Minister of Community and Social Services.

Mrs Caplan: No debate.

Mr Cooke: They don't want a commission that's accountable and they don't want the parliamentary assistant or the government to be asked any questions. They just want this legislation rammed through the Legislature.

Mrs Ecker: We're here to debate the motion.

Mr Cooke: They just want this rammed through the Legislature so that they can start closing hospitals and say, "We aren't responsible; the independent commission is responsible." It is really, really politically I think a bankrupt process and policy that the government's putting forward.

Ms Lankin: May I say to Mrs Ecker, we are here to deal with these sections of the bill clause-by-clause, which includes asking the parliamentary assistant questions. You absolutely had no point of order. You know something? I think it's just horrible the way the two of you over there, both parliamentary assistants who are on this committee, continue to humiliate the parliamentary assistant from the Ministry of Health by trying to shield her from questions. If she can't handle the questions, then that's the problem that she has.

Mrs Ecker: Give me a break, Frances.

Ms Lankin: Well, I'm sorry. Every step along the way—take a look at what we went through yesterday when you tried to move the agenda around from the motion—

Mr Cooke: "Give us two hours, please."

Ms Lankin: —so that you wouldn't have the parliamentary assistant up. I mean quite frankly, I think the minister should be here answering this. I think it's him who should be accountable, through the legislation and through this process, to answer questions.

Mrs Caplan: Right on.

Ms Lankin: But we don't have him here and so we will take our right to ask questions of the parliamentary assistant to the Minister of the Health.

Mrs Caplan: If you don't like it, you can leave.

Ms Lankin: If you don't like it, that's too bad. Sorry, we will do it, because in fact we deserve these answers. It is not clear, and it's not clear from the answers that

she's giving, that she knows what she is intending to do with this restructuring commission or why she's intending to get all the powers and give them to the restructuring commission, take them away from the minister, or why she is refusing to be reasonable about setting out some terms of reference of who's appointed to it, who is represented on this body.

I can't quite believe some of the comments you have made. "We don't want to be narrowed," you say, "in terms of the terms of this motion to have to put anybody on from a district health council because we want to pick the best people in the province." You shake your head. Are you suggesting that from the hundreds of district health councils in this province you can't find good, qualified people who know more about local health planning than you do? Please, answer that. You don't think the talent's out there?

Mrs Johns: I'm not suggesting that at all, Mrs Lankin. What we're suggesting—

Ms Lankin: So why are you suggesting that you can't have one third—

Mrs Ecker: Allow her to answer it.

Ms Lankin: —of the people appointed to this commission from district health councils? Why?

Mrs Johns: I'm either going to answer the question on whole or I'm not going to answer it, Mrs Lankin. I don't think it's fair that every time I start to answer it you cut me off.

Interjections: Hear, hear.

Ms Lankin: Then answer the question.

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Mrs Johns: We believe that there are a number of people out there who are qualified to do it. There is no question about that. What we're saying is, the minister is approving, so he's not insulating himself from the hospital restructuring, he's setting himself up as ultimately responsible for it. He's setting up powers, he's setting up members of the committee, so he is ultimately responsible for it. But there are 60 different projects, planning commissions, that are coming in in the next number of months. We need an ability to implement them quickly, to expedite the process, to move forward, so that Ontario will have proper health care and we will be able to reallocate the funds within the health care budget.

Ms Lankin: Have you finished answering the question?

Mr Gerretsen: Why did you vote against the earlier motion then?

Ms Lankin: My question, Ms Johns, is, why do you think it is inappropriate for one third of the membership of the commission to come from district health councils? You didn't answer that.

Mrs Johns: All I'm saying is, we want the ability to be able to choose where the members come from on the commission. We don't want to be tied by two members being from the association of district health councils.

Ms Lankin: I've heard you say now twice you want the ability to choose, you don't want to be tied. I'm asking you why it's inappropriate that one third of the membership—you've still got two thirds of the membership to choose whoever you want. Why is it inappropriate that one third of the membership of this commission,

which is going to be responsible for implementing restructuring plans to health services, be made up of people from district health councils, which I think, if you were to be fair, you would agree are the people and the bodies in this province who have the most experience with health services restructuring planning. Why would you think that's inappropriate? Why do you want to leave the power all up to yourselves all the time to make any rules at any point in time that you want?

Mrs Johns: I would suggest that they'd have the most experience with planning, because they've been doing planning for health care in the future, but they don't have the most experience with implementation. What we've seen over the time frame is that we get the planning done and we're unable to implement the process. We had a number of people who said that when they came to talk to us and they said that we had to have a way to break up the bottleneck. The Metropolitan Toronto District Health Council said that they could not do the planning and do the implementation. There has to be another way to be able to get the implementation done.

Mr Cooke: They're not being asked to.

Mrs Johns: That is what we are doing here. We are trying to get the process done to be able to implement the plans that came out of the district health council. We believe, as does the Metropolitan Toronto District Health Council, that it has to be a separate body that is responsible for implementing the process.

Ms Lankin: Ms Johns, I wish you would at least attempt to address the point before us. I have not suggested to you in any of these questions that there shouldn't be a commission. I have not suggested that it shouldn't work with the minister with respect to implementing health restructuring. I will have some points to make on what powers I think are appropriately rested with or vested in the commission versus remaining with the minister. That's a separate issue.

I'm talking about the membership of a commission and what it should look like. I have not said that there shouldn't be a separate commission. I have not at all disputed the fact that there are some who think it's a good idea to have the commission. As you know, I have said on a number of occasions I'm not opposed to the commission. What I'm talking about is to respond to the other point that you so conveniently forget, that we heard time and time again, that people wanted to make sure that the work of the commission was in fact related to the work that had gone on in local communities and was in fact informed by the people who had an understanding of the framework within which health care reform needed to take place in this province.

You say that there are people on district health councils who have the experience in local planning but not in implementation. You say there are bottlenecks all over the place and it's not getting done. I can tell you, as many people who came forward who raised concerns in certain communities, there were as many who said, "Leave us alone; we're doing quite fine," and you in response to them during the hearings said: "Great, we won't interfere with you. It's only where we reach the bottlenecks."

You've said that these folks don't have the experience in implementation. Who does and who are you going to put on the commission? Why do you want to exclude the possibility of one third of the membership coming from local district health councils?

Mrs Johns: I'm not excluding. I'm suggesting that we shouldn't be limited to that criteria that you're setting up. I'm not excluding the possibility that this may be the case. I'm saying the Ministry of Health doesn't want to be limited to your agenda on what the commission should represent.

Ms Lankin: Some of your colleagues across the way are using words like "straitjackets"—"We don't want to be straitjacketed here. We don't want to have rules." You know, that's what legislation's about. In fact, you set out the terms of reference, the membership, you debate these things, you have a sense of the direction you're going. You don't give yourself the blank cheque that we've talked about so often. You don't just say, "There shall be a commission and we'll put anyone we want on it, at any time, and it doesn't matter whether it's reflective of the desire of the majority of people with respect to health care reform; it doesn't matter whether or not it builds in the expertise of people who for the last number of years have been working and learning and know a whole lot more than most of us sitting in this room about what has to happen in the health care system."

What is straitjacketed about talking about one third of the membership? I didn't prescribe the makeup of the whole membership. You have two thirds of the membership to deal with, the majority as a matter of fact, if you take a look at it. All we're saying is, relate this to the people who have actually been doing the work in the province of Ontario, the people you rhetorically said during the hearings, over and over and over again, you were going to listen to. You were going to have regard to their reports, you were going to take that into consideration. Bring them into the process. Put them on the commission. I'm only asking for one third of the spots.

Ms Johns, you have not given one reason. You've skirted this issue. You've gone around it. All you've said is, "We want this, we want that, we want the ability, we want the freedom." You don't know, I don't believe, who you're going to put on this or what you're going to do. And if you do, then tell us. Tell us why that should preclude the possibility of one third coming from district health councils.

Mrs Johns: I believe that I've answered the question. The minister does not want to be tied to who will be on the commission. We aren't prepared to accept this amendment and we won't be supporting it, because we do not believe that we should be setting now who will be on it.

For example, with your idea we could have people who were on the district health councils who were unhappy as a result of the planning process. Let's say there was a rift between them. There may be a conflict of interest with specific people who went through the planning process of a district health council. That may be one reason why we don't put some of those people on. It may be that they're planners, not implementers. There are a number of reasons why we would choose specific people versus other people. We're not prepared to say at this

moment who the people will be who will be on the commission. We are not prepared to be tied to who these people will be.

Ms Lankin: But I've heard over and over again that you have to have this bill passed on January 29 so January 30 you can start to save all of this money, the \$1 million an hour more that you're spending than you're taking in. On January 30 you're going to be able to save it because these powers will be there. So you're going to have that commission in place and it's going to be closing hospitals. You must know who you're going to put on it, so tell us.

Mrs Johns: I believe I've answered that question.

Mr Maves: Several times.

Ms Lankin: I don't think so.

Mr Gerretsen: How many members are going to be on the commission in total?

The Chair: Mr Gerretsen, I don't believe it's your turn.

Mr Cooke: It's a good question.

The Chair: It is a good question, but it's not Mr Gerretsen's turn.

Ms Lankin: It's a good question, so I'll put the question: How many people are going to be on this commission?

Mrs Johns: Eight to 10.

Ms Lankin: So what's wrong with three being from district health councils? Are you suggesting that you can't accept that three of those people are from district health councils?

Mrs Johns: That's correct.

Ms Lankin: Why is that?

Mrs Johns: Because we don't want to be tied to where the people will be coming from for the commission. We want the ability to be able to choose the best people to be able to implement the process and to be able to restructure hospitals in an expedited manner.

Ms Lankin: Have you discussed this proposed amendment with the minister?

Mrs Johns: Yes.

Ms Lankin: Did the minister suggest to you that he has a list of names and that it doesn't include district health councils so that you couldn't possibly support this amendment?

Mrs Johns: No, he didn't.

Ms Lankin: Does he know who he's going to appoint at this point in time?

Mrs Johns: As far as I know, he doesn't know who he's going to put on the commission yet.

Ms Lankin: And he doesn't know the exact number of people who will be on the commission?

Mrs Johns: Eight to 10.

Ms Lankin: But he doesn't know the exact number, whether it will be eight or whether it will be 10, at this point in time? Have you discussed the rest of the amendments with respect to the commission that are set out in this schedule?

Mrs Johns: Yes, the minister has seen all the amendments.

Ms Lankin: Are you going to support any of these amendments with respect to the commission?

Mrs Johns: With respect to the commission?

Mr Cooke: Any of the opposition amendments.

Mrs Johns: No.

Ms Lankin: Well, you know, Mr Chair, I'm sorry if this has taken on a tone that's uncomfortable for people, but let me tell you, I am really uncomfortable with the process that we have and with the bill that we have in front of us and with the powers that are being taken into government and with what I believe is an abusive process when we have a parliamentary assistant who comes here and sits here and says: "We believe we want to be able to pick the best people. I can't tell you that the best people aren't in district health councils, but we don't want to be prescribed, we don't want to be straitjacketed, we don't want to have to commit at this time." That's the problem with this whole bill. You won't tell people what you're going to do with the powers.

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In this section, we're talking about a commission that is being set up. You won't discuss with us what the membership and the makeup of that commission is. That's pretty fundamental to the work that's going to be done, and to whether people feel confidence in the government that the restructuring and reform that will take place is in keeping with the nature and the direction of the work that has been set out in local community after local community, within the framework of determinants of health and health care reform that many people have worked a long time to build a consensus in support of. We don't have one word from this government about whether it's your intent to continue and to follow down that line.

You've set up a commission in which you won't set out what any of the terms of reference are. You won't set out what the powers are, simply that you're going to give it powers. Presenter after presenter after presenter came forward and said: "We do not want to see this commission having the powers directly. We want to see the minister maintain those powers. We want the commission to develop the implementation plans, and that's fine, but we want the minister to be the one that has the approval and says, 'Go for it, do it, implement it.'"

You've completely ignored that in your presentation. You've said this is what we've heard from people with respect to the commission. You've completely ignored that the next amendment we'll be dealing with, which is a government motion, runs absolutely contrary to the advice we got from every presenter who dealt with this issue.

You're cherry-picking your arguments. You're not giving us full answers in terms of what you intend to do. It's the blank cheque, because I don't believe you know what you intend to do. You've rushed through with this. You've put in place a commission that you're going to give all sorts of powers to, and you're not telling the people of Ontario how it's going to exercise those powers and in what framework of health care reform. You, Ms Johns, I don't believe can answer those questions.

This process is flawed. This is an abuse in terms of being able to deal with legislation in an open, public way. It is a continuation of the way this government has tried to ram this legislation through. We have fundamental issues with respect to how this commission's going to

work. Unlike my colleague next to me, I support the concept of a commission, but I want to see the membership, the rules, the terms of reference, the powers and the limits on the powers in the legislation.

We have amendments setting that out, and we've done it in a way to be as constructive as possible, not to limit the powers and final decision-making of the minister—in fact they'll allow him to continue to make decisions—and you've just indicated that you're going to vote against every one of them.

I find this a real unfortunate approach on the part of the government, that any kind of constructive criticism, any kind of taking what we heard from the public and trying to build it into amendments to the act, you're simply stonewalling. That's the approach I think you're going to be taking all the way through this. It almost makes me wonder why we waste our time sitting here. We can't get answers from you, we can't get response to the public presentations and the issues that have been raised, and we can't get a due process that builds into legislation accountability of ministers of the crown in this government.

Mr Phillips: First, in response to Mrs Ecker, I hope she wasn't suggesting that we can no longer ask any questions, that the question time stopped yesterday and we can't be asking questions of the parliamentary assistants from now on. You weren't suggesting that, were you?

Mrs Ecker: I'd love to answer if you'd allow me, Mr Chair.

The Chair: Did you want Mrs Ecker to answer that question, Mr Phillips?

Mr Phillips: I'll just make the assumption she wasn't. If she was suggesting that, it is a mockery of the whole process. So we'll continue to ask questions, and if you don't like it, you can interrupt again, as you did Ms Lankin. You can interrupt me—or try it.

Somehow or other the government members have been told, "You go over there and vote against every single opposition amendment and vote for every one of your amendments." We just heard that the Minister of Health has reviewed the NDP amendments and we're told they're voting against every one of them. I say to the government members that if I were in your shoes, I would be looking at these amendments and saying: "Surely we can adopt some of them. We can't look like we are against every one of them. Logic tells us we can't do that."

Here's one amendment that the NDP have proposed that you should be supporting. The public is extremely concerned about you. Even your supporters, even the great believers in the Common Sense Revolution believe you've overstepped your bounds on this bill. Yes, you won the election, and yes, you're going to implement this thing, but even your supporters say you've trampled on the public.

The bill you've got before the Legislature does give enormous powers to the ministers, does take away enormous rights from a whole group of people. If I were in your shoes, I'd be looking for some symbols that you're prepared to at least back down a little. Here's one amendment that suggests that, rather than the commission

solely being picked somewhere over in the corner office with no input from anybody, handpicked by the Minister of Health to do his bidding, a minority, three of the eight, nine or 10 members, be from health councils. If I were in your shoes, I would be looking for ways to assure the public that you're not trampling on the rights to the extent that we certainly think you are.

You still control the thing; actually, you make the appointments. But I would grab this amendment, because I'll guarantee you that in the end you're going to be held responsible for closing hospitals. Yes, some hospitals in this province have to close, but if you want—you're shaking your head yes. I say to you that this should be a public decision. The public should be involved in it, not the dictators over at the Ministry of Health led by the Minister of Health. If I were in your shoes, I'd want the public involved in it. After all, they built it, they raised the money, it's a community facility; many of the Catholic orders have built these, the Salvation Army, the Jewish community, and many community organizations put their hard-earned money and sweat into this. And you're going to close them. I might perhaps understand that, but I would be looking for ways that you broadened the public input in this thing. But we're told no way, that you won't even consider this amendment.

I want to ask a question to the parliamentary assistant. You've indicated that you don't think this is a role for planners, this is for implementers. What's the difference in the skills, and where will you likely find the implementers for this?

Mrs Johns: I think there's a change process that has to happen. Implementers have to be able to take the plan and say: "How strategically can we implement this? Which is the best way to do this?" They have to be able to deal with people on the issue, they have to be able to deal with the closing of hospitals, with amalgamations. There's a number of different issues that are actual implementation issues versus planning issues.

Mr Phillips: What sort of people are they? I'm just trying to get an idea. What would they likely be doing right now?

Mrs Johns: I think there would have to be a vast array of people who would come into the process. There would have to be people who have gone through amalgamations, there would have to be people who have dealt with labour changes, there would have to be lawyers who have dealt with the amalgamation process, a number of different people who can add their expertise to a process to make it work. There's a vast array of people. Consumers have to be involved in this.

Mr Cooke: Should we have a section here that says a minimum one third of lawyers?

Mrs Johns: I didn't say that. You asked me specifically for some of the people I would perceive in it and that's the kind of people. Providers too.

Mr Phillips: With all due respect, those people exist on the district health councils. There's no question of that.

Mrs Johns: They may well.

Mr Phillips: My experience is that you don't separate a planner from an implementer. People who run good organizations have both those skills, and the thought that

this is a unique, different, completely planningless skill makes no sense to me. I say again to the government and to the parliamentary assistant, can you explain in simple terms to me why the government would not want to try and find one third of the members, three of them, who would be members of district health councils? Are there not three competent people in the province who have that background and experience that you could find from among the 200 or 300 people or more on these boards?

Mrs Johns: I would like to say that your stand is not the same the Metropolitan Toronto health council, which has recommended that there be a new body set forward to be responsible for the implementation.

1700

Mr Cooke: There is a new body. This is the commission.

Mrs Johns: They're saying there has to be a different group of people to implement. That's what we've taken as our basis to move forward with this.

Mr Phillips: I would be interested in seeing the Metro DHC's recommendation that nobody on this commission could be from a district health council. I understand the need for the commission; I'm not disputing that. It's the makeup of it. You're telling me that the Metro Toronto district health council said there should not be people from district health councils on this?

Mrs Johns: No, I didn't say that. I said it should be a separate body that implements the process.

Mr Cooke: It is a separate body.

Mr Phillips: That's not a problem. I thought you said I disagreed with the district health council, which said there should not be representation from district health councils on it. They never said that.

Mrs Johns: They didn't say who they thought should be on this new commission. That's correct.

Mr Cooke: So they didn't really say anything relevant to this debate at all.

Mr Phillips: I must say to the government, today we proposed a series of amendments to you that you should have embraced, some designed to show that you're implementing this thing; this one designed to help you through what's going to be a very difficult period.

Obviously, Jim Wilson has flipped through these things and said: "Tell them no. Tell them no. Tell them no. Tell them no. Tell them no." So the answer to all the NDP motions is no. Did he look through ours?

Mrs Johns: I didn't say we were saying no to all amendments. I said we had decided on the hospital restructuring amendments. There is a difference between what you're saying and what I said.

Mr Phillips: I'd like to see the Hansard on that tomorrow, because I thought you said—

Ms Lankin: To the commission.

Mrs Johns: To the commission.

Mr Phillips: Unfortunately, I guess you've given us your decision. You're making a big mistake, and the debate will continue.

Mrs Caplan: We have proposed several amendments after this one. Despite my reluctance to support a commission, I recognize that it is the government's intention to move ahead with a statutory commission, so we were attempting to be helpful and suggest ways we could

support this commission: if it had process that involved the communities, if it had procedures, and also to ensure that it was accountable and carried no ministerial powers with it, that the minister was ultimately accountable.

I'm very upset to hear that the minister is not willing to consider any of those amendments to the restructuring commission that might make it possible for us to ultimately support a commission. My own view is that you could establish a commission without statutory authority in Bill 26 simply by using the Ministry of Health Act. I recognize that you may ultimately choose to have a commission, but it could be structured in such a way that it would be accountable and would have very specific duties as well as procedures that had to be followed. Without that, I think the commission is unsupportable.

It's unsupportable for one very good reason, that is, that the Ontario Hospital Association and almost every—I use the word "almost" because I can only remember one presentation that supported a commission that had full powers as proposed in Bill 26. Of the many, many presentations that spoke to the restructuring commission, each one said they supported the Ontario Hospital Association or expressed their own concerns about a restructuring commission that had powers delegated to it by the minister. With the exception of only one, the Ottawa General, I can't think of any other presentation before this committee that said, "Delegate powers." Each and every one said, "Do not delegate the powers." Similarly, I remember the Hamilton district health council making the point which is completely contrary to what you've just said. They said, "If you want implementation to be successful, there must be a link with planning."

My last word on this amendment, before we start debating the other amendments—and I think we should debate them, because I think it would be helpful to you if you consider supporting them. The proposal to have a third of your members, three out of 10, come from the district health council movement is a very reasonable one. It would give you that link between implementation and planning. You talk about the need to have experience. Certainly people from the district health councils around this province have experience in procedures. They have within their own communities been responsible for planning. I don't think anyone in the province has been involved with the implementation of a plan to close, because we haven't seen any, so you're not going to be able to find anybody in Ontario who has the experience of implementing a plan to close hospitals.

Therefore, I suggest very strongly that an amendment that suggests to you that you look at the hundreds of people who have participated on district health councils, who are active in the Association of District Health Councils, for just three out of your 10 or two out of your eight members—call on their advice and expertise and I think you would have support out there in the communities and a link between planning and implementation.

The other problem I have is that you haven't told us until today what the commission is going to look like. You've made no commitment as to representation. You haven't told us what the duties and responsibilities are going to be, except that all powers will be delegated. You haven't told us the specific mandate for the commission;

in fact, there is no mandate in the legislation as it now stands. The concern I have is that while you're saying you don't want to be straitjacketed and you want flexibility, you also don't want to tell us what it is you intend to do. What I've heard, and here's the question I have for you: Is it true that any one of the individuals who are members of this commission could act as a single commissioner to deal with any one of the 60 proposals you are going to have coming before you? Could any one of them act with all the powers of the commission in implementing any of those plans?

Mrs Johns: The potential could be that yes, one person could act, especially on a specific proposal that comes in from one of the 60 areas. We may allocate a specific person to one of the 60 plans that come through.

Mrs Caplan: That's exactly what I understood the intent was. That is a real concern I have, because if you have a commission that isn't balanced—the district health councils today have one third provider, one third consumer, and one third representation from what would be considered the general public, someone with no experience in providing service. As I understand, that's the way the district health councils are established. Within that movement you have people who, at the time they arrived at the district health council, had no experience whatever in planning. It's really important that you consider an amendment, that you tap some of that energy, that expertise and that advice and do what the district health councils, all of which came before you being very positive, wanting to be helpful—to slap them in the face and say, "There's no role formally for you. We will not be fettered or constrained in any way as to the membership," I think you're making a big mistake.

If none of the opposition amendments are acceptable to the minister, then frankly, as much as I would like to see some suggestion that you've listened, that you want good law or that you've heard from the presenters, I think the message to them will be that you haven't heard anything, because the only amendment to this section runs completely contrary to everything that we heard. The only amendment that is here is a government amendment that expands the ability to delegate powers when all the presenters said, "Don't delegate powers."

I could go on but I don't think there's any point, and I will ask the minister, through the parliamentary assistant, to reconsider this position, because it's tremendously frustrating for those of us who sat on the committee and heard the presenters come forward with good ideas and good suggestions to have them told, "We're not accepting any amendments."

1710

Mr Cooke: Just a couple of questions: I must say that when I just heard the answer to one of Ms Caplan's questions that could be looking at a one-person commission, then I think of this person as being basically a one-person community arbitrator.

Mrs Caplan: You've got it.

Mr Cooke: That gives me some reason for concern. I think if you could accept this type of an amendment, at least you begin to build into the process some diversity that gives people the security that this is going to be a fair process. But I don't see how anyone can believe it's

going to be a fair process when everything's done by regulation and you won't accept any direction at all for the makeup of the commission. It's really quite scary.

When Mr Bradley and I met with the government House leader when we were dealing with how this bill was going to be dealt with, we were told for the first period of time that there would be no public hearings because the government had to have the legislation by Christmas because they were going to begin implementation on January 1, both municipal restructuring processes and hospital restructuring processes.

I'd like to now ask, can you outline for us some of the time lines we're looking at? January 29 is when the bill likely gets third reading, and I say "likely" because I just read things in the paper and I don't know what some members are going to do, but likely gets third reading. Then what happens? When does the commission get appointed? When do we start seeing hospitals closed? When do we start seeing savings? And then when do we start seeing reinvestment?

Mrs Caplan: Maybe the answer, Mr Chairman, to be helpful to the parliamentary assistant, if you said Mike Harris has no plan to close hospitals.

Mrs Johns: I would like to say that on January 29 the minister will be looking for people for the commission. He will be looking to appoint people to the commission.

Mr Cooke: So he's done no work on looking for members of the commission?

Mrs Johns: As you know, he's looking at people now, but he hasn't decided on people. We will be looking to try and approve the Metropolitan Toronto District Health Council report or to make changes to it. We will be looking at the Metropolitan Toronto District Health Council report. We will be setting up this commission as quickly as possible to be able to implement the approved plan from the minister as soon into the new year as we possibly can.

With the savings that are incurred, as we have said, as we find savings we will be looking at reallocation of dollars into health care in different areas. We're already doing some allocations into health care, as you know, such as dialysis.

Mr Cooke: I heard that. Maybe the ministry can be more precise because you really haven't been precise. You've said, yes, there's going to be a commission set up some time after January 29 and Toronto's going to be looked at and there'll be savings and we'll reinvest. Are there time lines that are attached to implementation?

Mr Peter Finkle: I'm Peter Finkle from the ministry. The time lines are not specified. There's a limitation plan associated with the Metropolitan Toronto District Health Council restructuring report. We do have a fiscal imperative starting April 1. We do have 5% less dollars in the system so it's important, and I think you heard that from all the hospitals that presented, to move on with restructuring to make sure dollars are directed to patient care wherever possible and not redundant administration and excess cost in the system.

Mrs Caplan: Is that the \$1.3 billion reduction?

Mr Finkle: But the establishment of the commission is awaiting the passage of the act. We have not—

Mr Cooke: I know the commission wouldn't be established. I know that. I'm assuming that since the Deputy Premier and the government House leader have indicated that things were originally going to get rolling January 1, the ministry has time lines that are attached. You can't be telling us less than a week before the bill is going to get third reading that you don't have an implementation plan and time lines attached to the establishment of the commission, when you're going to respond to Metropolitan Toronto's recommendations. We know how you work; you work very efficiently and very effectively. We used to see your reports. We're not privy to that now, but you're before the committee and you can share that information with us.

Mr Finkle: We're working on a number of things concurrently. Certainly in my responsibility we're dealing internally with the recommendations of the Metropolitan Toronto District Health Council whose report, as you know, was tabled I think September 29. There was an amount of public consultation that went on, deputations and representations made by hospitals affected by the recommendations of the report made to the council. The council then submitted its recommendations to the ministry and we're reviewing those recommendations right now.

We will be moving forward with our final consideration with how it fits with the implementation plan, because some of those changes the council made did affect the implementation schedule that was laid out in the original report.

Mr Cooke: Toronto's your number one priority. That gives me some comfort.

Mrs Caplan: Keep talking. It could get done in Windsor.

Mr Cooke: That's what I'm afraid of.

Mrs Caplan: Or they could have just one guy doing it in Windsor.

Mr Cooke: That's true. Do you have any time lines with respect to Metro?

Mr Finkle: No, we've not concluded our work yet.

Mr Cooke: I've always really thought that most of the public servants, in the way that they can answer questions before a committee, would do better than any cabinet minister in question period and you've proved me correct. I've got nothing out of you.

One final question to the parliamentary assistant. You won't accept this amendment that gives some guideline for the makeup of the commission. Is there anything in terms of regional representation?

Mrs Johns: There may be some people put on the commission from different geographic areas. We are looking at a number of people from different areas and with different expertise. So yes, there will be some geographic representation. I know you're probably going to ask me next how many, and we haven't ascertained that at this particular point.

Mr Cooke: I know that probably does Windsor-Essex out because there are no card-carrying Tories down in Windsor-Essex.

Mrs Johns: That's not necessarily true.

Ms Lankin: Actually, that gives me an idea. Maybe if I added to my amendment a requirement that a minimum

of one half of the commission be card-carrying Tories, that would pass.

I want to ask a question of the ministry and ask Mr Finkle if he could tell me whether in his experience in seeing the work of district health councils around the province there are any district health councils who have had any experience in development of implementation strategies and reports or who have thought about the issues of implementing what it is they're planning, or do they just do planning in the abstract, totally separate from any thought of how it gets implemented?

Mr Finkle: In the main, as you know, the functions of district health councils are on the planning side. We do have a hybrid situation in Windsor-Essex that was set up to do a little bit of both, but it has limited responsibilities on the implementation side. Even in the way that restructuring be carried out, it's largely going to depend on the goodwill and participation of hospitals to voluntarily implement a lot of these changes. I've certainly witnessed that in the case of Metro where 18 months of planning—we had nothing but goodwill during that planning process, and I expect it's going to carry on during the implementation process.

1720

Ms Lankin: Are you of the opinion that there aren't people on district health councils who have any experience with implementation of restructuring of any sort?

Mr Finkle: No, there's a great variety of people who have experience in other sectors and other jurisdictions and other types of industry with broad restructuring, and certainly it has been my experience that the district health councils have those sorts of people. They will in all likelihood form the basis of some part of the decision-making.

Ms Lankin: Just one other question, then I have a couple of quick ones for the parliamentary assistant. You did refer to some of the presentations from hospitals and others over the course of the hearings, and I know that you witnessed a number of the days of proceedings of hearings. Did you also hear presentations from any of the district health councils or the association of district health councils?

Mr Finkle: No, I did not.

Ms Lankin: Okay, then I will redirect that question to the parliamentary assistant, who I know did. Thank you very much.

I just want to try one more time to understand your reasons for refusing this, because I really think this is incredibly unreasonable. You've said you want to be free to pick whoever you want, you want to be free to have the best people. Let me tell you, I reject that you can't find three incredible, wonderful, dynamic, skilled people from among all of the district health councils in the province.

You said that everyone came forward and argued that it had to be a separate body. No one is saying anything about that. We're just saying that on that body there should be some representation of district health councils. You said that Metro argued that it should be a separate body, but I don't think Metro argued that there shouldn't be any representation from the district health council community on that restructuring commission.

You haven't given us any reasons other than that you don't want to be told that you have to have district health council representation on the commission, and I find that absolutely unreasonable, because again the one thing that you refuse to acknowledge when you keep pointing to, "We heard that we had to have a separate body. We heard this. We heard that," the association of district health councils and every district health council that came forward argued that there should be representation from district health councils on the Health Services Restructuring Commission.

Why are you refusing to respond to that request, made very directly from some people who are supporting the establishment of the commission? Why are you refusing to respond to what you heard in the hearings and why are you refusing a reasonable request that does not tie your hands in terms of the entire makeup of the commission or in terms of the individuals, but simply sets out in legislation the intent that you've articulated over and over again that you say your government's committed to, which is to build district health councils and build linkages between them and the work of the restructuring commission?

Mrs Johns: I do not believe that I am saying there will be no district health council representatives on the commission. What I am saying is that we're not prepared to set the structure today or in the legislation. We want the ability to go out and choose the people in case different circumstances arise along the line also. It's not a static process. We want to be able to choose the people who best can help us implement the hospital restructuring.

There may well be district health council people on the board. I'm not saying and I have never said that there won't be district health council people on the board. What I have suggested is that we do not want legislation that ties us to having a specific number of people from different groups on the commission.

Ms Lankin: My last comment is that you have in fact said that district health councils are planners not implementers, you have in fact said that the Metro DHC report called for a separate body and therefore shouldn't relate to district health councils. You've made comments which anyone listening to you today would have to believe suggest that you don't plan to include district health council representatives on this commission. You've dismissed them in so many ways in trying to defend your argument about not having a set number, and that gives me cause for concern.

Let me also say that the one recommendation that people have made about the membership of this commission to you is that there should be DHC representation on this. Sorry, there are two recommendations. The other was there should be someone who is sensitive to denominational institutions. Those are the only two recommendations that we've heard, but by and large the one we heard most often was that there should be DHC representation of some sort—not a majority, not overwhelming, but they should be there—and you're refusing to acknowledge the public input that you have received and you are refusing to accept that notion.

Quite frankly, it is wrong of government to simply say, "We will do what we will do when we want to do it in

the way we want to do it and we don't have to be accountable to anyone in terms of the suggestions we hear or the commitments we make and nothing needs to be in legislation, except the power to put whoever we want on, and we'll go ahead and do it."

That is symptomatic of your bill. To listen to you sit here and say, "We want the ability to do whatever we want, to appoint whoever we want and we don't want any rules placed on us with respect to who those appointments could be," even very minimal rules that give you hundreds of people to choose from—when we're suggesting that whatever size your commission is, just one third be representative of district health councils, and if it's three people out of 9 or 10, two of those should come from the provincial association because they have a provincial overview, that should be helpful.

In closing, let me say that I suspect we are going to see this attitude from you in every one of our amendments coming forward, where we try and give some definition, try and get from you some understanding of exactly how you're going to use these powers that you're giving to yourself. It is the fear that the public has expressed and it is the fear that we have expressed, that it is a blank cheque, that you're refusing to write the number in before you cash that cheque. This is not good governance, this is not good legislation, and unfortunately all of us are going to have to live with the results of it.

The Chair: That concludes the discussion on the amendment proposed by Ms Lankin to section 1, subsection 8(2) of schedule F.

Shall the amendment carry?

Ayes

Caplan, Cooke, Lankin, Phillips.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

The second amendment we will consider is a government amendment.

Mrs Johns: I move that subsection 8(7) of the Ministry of Health Act, as set out in section 1 of schedule F of the bill, be struck out and the following substituted:

"Duties and powers

"(7) The commission shall perform any duties, and may exercise any powers, assigned to it by or under this or any other act."

There are a range of duties that we want to clarify. We want to clarify the commission's authority to exercise powers which may be assigned to it. We want to make sure that, in addition, they are able to perform different duties as we require them and as we need to have them come into play. We're trying to set out in this particular section the duties and the powers of the commission.

Mrs Caplan: Where in this legislation have you set out the duties and the powers? We'd like to know exactly what duties and powers you have in mind.

Mrs Johns: We're assigning powers under section 6 of the Public Hospitals Act.

Mrs Caplan: Where are they listed here, so we'll know exactly what duties and powers you intend to give to the commission?

Mrs Johns: Under section 6.

Mrs Caplan: Under this amendment. This amendment, as I read it, and I stand to be corrected, broadens the powers that the minister can delegate to the commission.

Mrs Johns: It sets out the duties and the powers that the commission will have; that's correct.

Mrs Caplan: No, it says, "The commission shall perform any duties, and may exercise any powers, assigned to it by or under this or any other act." The existing legislation says, and this is the one that you're amending, "The commission shall perform any duties assigned to it by or under this or any other act."

Why do you need this amendment? As I read the initial section in the act, and I had some concerns about that, "The commission shall perform any duties assigned to it," everyone who came before us had concerns about the ability to assign powers. Now this legislation says, "and may exercise any powers." You've made it worse.

1730

Mrs Johns: What we're saying is that the commission needs powers to be able to look at different items that may come out of restructuring, which may be long-term care or different areas. There might be powers and duties that were set up in the district health council that may be expanded, in the ability to have health care restructuring as opposed to hospital restructuring.

Mrs Caplan: Could I draw your attention to the "Summary of Recommendations, Bill 26," that's been put together very excellently by the research staff. On page 3, it begins, "S.1 revises section 8, the Health Services Restructuring Commission," and in here are all the recommendations of all the presentations to the committee. Could you point out to me which one of these recommended an amendment that would enhance the ability to give powers to the commission? Who came before you, who did you listen to that said to give yourself the ability to give this commission more powers?

As I read this, every one of these suggests limiting the ability to delegate powers and authorities to the commission. Could you just point out to me where you heard that you had a problem over the course of these hearings and why you brought forward this amendment which will delegate and give any powers to this commission?

Mrs Johns: Jacques Labelle, for example, says, for one thing—

Mrs Caplan: The one. It's Ottawa General. I referred to the one presentation out of—

The Chair: Mrs Caplan, let Mrs Johns answer.

Mrs Johns: "We understand that the ministry will be given extraordinary powers, but we're saying for the next four years, we're willing to live with this. At the end of four years, based on the achievements, we should consider whether these should be abolished. But we think we have to go through extremely difficult, perilous years, and what above all is needed is decisiveness and the ability to get changes to occur rapidly.

"Closing hospitals, transferring whole programs, transferring patients, transferring medical staff are extremely complex. If we don't put any urgency on that, I can see

ourselves 10 years from now still looking at it and trying to find ways for it to occur. This has to be a number one priority for the next four years, not only to plan it but to get it done, and I'm willing to pay whatever price is necessary to see it achieved."

Mrs Caplan: I acknowledge that those were the comments of Jacques Labelle, the president of the Ottawa General Hospital. In my earlier comments, I did mention that there was one presentation that recommended that. As I look through this, I can't find a second one.

We heard several dozen that came forward, including the Ontario Hospital Association, that said do not delegate powers. Can you find one other reference that said you should delegate these powers and bring in an amendment to strengthen your ability to delegate powers?

You've read the one that I acknowledged was there. But it's amazing that in three weeks of hearings that was the one. I would suggest to you that while there may be a need for Jacques in Ottawa, if he sees that problem, I can tell you the other Ottawa hospitals do not agree with him; neither does the Ontario Hospital Association, the Norfolk Hospital—I don't want to go down the list of each and every one of the presentations. But I specifically asked you that question to see if that was what you were going to read into the record, and it's amazing that you listened selectively to one out of several dozen. Were there any others?

Mrs Johns: I was going to say that the OHA acknowledges that the commission has to have flexibility to be able to implement the plan also, and a number of people suggested that, a number of different hospitals suggested that there had to be flexibility so the plan could be implemented. People daily said, from our hospital sector, that there is a crisis in hospitals and there had to be some ability to get the restructuring done. Admittedly, a number of them said, "Not our hospital, but somebody else's hospital will need this."

Mrs Caplan: That's not what they said. That's misrepresentation. What they said was that your decision to cut \$1.3 billion out of hospitals has created a crisis. They acknowledged that. But the Ontario Hospital Association and the other hospitals did not come forward and say, "Not my hospital." What they said was: "If you're going to establish a commission, make sure it is the minister who is accountable for the decisions. Do not allow the minister to delegate his responsibility. The commission should implement. Be clear about their duties and responsibilities, but do not give them the powers to act without accountability." We heard that time and again, yet selectively, you've listened to the one hospital administrator in the province.

What this tells me is that you really were not listening at all. You only listened to those who came in and told you what you wanted to hear. To the dozens of others who came forward with legitimate concerns, you've dismissed them, and I think it's disgraceful.

Ms Lankin: Mrs Johns, you looked like you were going to just respond to that point. No?

I think Mrs Caplan is absolutely right in terms of her assessment of what we heard. I would fire the political staff—I'm sure it wasn't Brad, but whoever it was—who decided to pull out that one Hansard of Mr Labelle and

give it to you to try and justify this when you know that every other presentation on this issue gave the exact opposite advice. You might remember that Mr Labelle is also the person who said, "We don't want to have DHCs having input into this because we don't like what's happened in Ottawa and we don't want the minister listening to DHCs."

When I asked the question very directly to Mr Labelle, "If there isn't a consensus here in Ottawa," and I think the words I used were, "If you're saying Ottawa can't get its act together, who is it that the minister should listen to?" he said "Us." That's the one hospital that thinks it has all the answers and that the minister should listen to—that's what he was suggesting in that presentation—and all the others came forward and said they supported the commission and that the commission had to be able, on the direction of the minister, to do the implementation, but that the accountability had to rest with the minister.

Given that that's what we heard from everybody who commented on this section except Mr Labelle, why did you not listen to all those other people and why did you only listen to Mr Labelle?

Mrs Johns: I believe I listened to all the people, but I believe we have to give the commission the power to act. We heard all the time that there were bottlenecks, that we could not get the process completed and we had to be able to act. This is what we are doing: giving the commission the power to act.

Ms Lankin: That's the same answer you give when we talk about the powers in section 6 that the minister takes on to himself, "Because the minister has to be able to act," but in subsection 8(7), you are saying the minister's going to give those powers to the commission. Why is it the commission that has to be able to exercise those powers and not the minister? That's the point people made, that if the minister is taking these powers on to himself under sections 6 and 8, he should be accountable and responsible and not delegate them out to a body for which there is no accountability back to the Legislature or by any other means.

Mrs Johns: First of all, we believe there is accountability because the minister will be accountable for what the commission does. You have said that previously. We believe there is accountability.

Ms Lankin: Maybe this is at the heart of it. Would you explain to me what that accountability is? You did say earlier that the commission was arm's length, so I'm confused in terms of what your expectation is.

Mrs Johns: The minister has the ability, under one of the sections of the act, to go in and look at a commission at any time and see what it's doing and see what it's enacting, so there is some accountability with the minister from that level.

Mr Silipo: We have a commission to oversee the commission.

Ms Lankin: Exactly. The way the act is set up and in the amendments you're bringing forward, there's going—

Mrs Johns: Also, we have accountability through appointments.

Ms Lankin: —a commission to look into the commission that's going to look into the planning commissions at the local level.

Mrs Johns: We have accountability—

The Chair: Excuse me, Mrs Johns, Ms Lankin has the floor.

1740

Ms Lankin: And this is the government that doesn't like bureaucracy? Oh, please. There is not a lot of rational thought given to how this has been structured, and I think there are significant problems.

But you said earlier that this section sets out the powers and the duties of the commission. It doesn't. We don't know what powers you're going to be giving to the commission. When you started to talk about it, you said these words: "powers that may be set up in the DHC that may be expanded." I don't know what that means. Could you tell me?

Mrs Johns: I'm sorry, can you say that again?

Ms Lankin: You referred to the powers this commission was going to have. I wrote your words down as you were saying them, that they could be "powers that may be set up in the DHC that may be expanded."

Mrs Johns: For example, in some of the district health councils they've been looking only at hospital restructuring. We may want the ability to look at health care restructuring within a community. We heard a number of times, for example, through the—

Ms Lankin: I'm sorry, maybe I misunderstood. That's powers I'm asking you about.

The Chair: Ms Lankin, why don't you let Ms Johns finish answering the questions.

Ms Lankin: Mr Chair, Ms Johns does have a habit of going off on a totally different tangent from the question I ask. If you would like us to move expeditiously, I will try and be polite and not interrupt, but I would like her to address the point I'm raising, which is powers, not what reports DHCs are looking at. DHCs don't have powers under this legislation other than to advise.

The Chair: Moving expeditiously is not one of my objectives. Did you want to finish answering the question, Ms Johns?

Mrs Johns: I was going to say something different than maybe she wants me to, so I'm kind of lost now on what I should say. I was going to say that in the Ontario Nurses' Association proposal, for example, the ONA suggested that we had a narrow scope in some of our hospital restructuring and we needed to expand that in some cases to be able to provide a better continuum of care within the community. That's one of the things I was talking about when I was talking about powers and duties.

Ms Lankin: Before you go on to something else, let me ask you about that. I think most people who know anything about health care restructuring would agree that it's health systems restructuring that you need to be looking at and not hospitals. But what has that got to do with powers? That's what you ask the DHC to look at on a local basis. It's got nothing to do with powers. What powers?

Mrs Johns: Those were the powers with the district health council that I was talking about previously.

Ms Lankin: What powers? The district health council is an advisory body to the minister, set out in the legislation. They have no specific powers. The minister asks them to do a report. If they agree to do the report, they

do a report. What powers are you giving this health care restructuring commission?

Mrs Johns: Powers under the Public Hospitals Act, in section 6.

Ms Lankin: You said that before, the last time Ms Czucar wrote that down for you and underscored it. Would you tell me what you mean by "under section 6," which powers you are going to give them? By the way, you do add in here "and any other act." What powers under other acts are you going to give them?

Mrs Caplan: The right answer is, "Anything we want them to do under any piece of legislation."

The Chair: Mrs Caplan.

Mrs Caplan: I'm just trying to be helpful.

The Chair: Ms Lankin would like Ms Johns to answer.

Mrs Johns: "6(1) The minister may direct the board of a hospital to cease operating as a public hospital on or before the date set out in the directions where the minister considers it in the public interest to so.

"(2) The minister may direct the board of a hospital to do any of the following on or before the date set out in the direction where the minister considers it in the public interest to do so"—

Ms Lankin: Without reading all of section 6, what you are referring to are the powers of the minister to close or merge hospitals, or to direct the ceasing of providing of services, essentially that section, right?

Both times you've been asked very specifically what powers, and we pinned you down on it, the only answer you've given, both times, are the powers under section 6 of the Public Hospitals Act. Now answer me, why won't you amend this section to say—I would still disagree with it, I'll tell you that up front—that the powers you're going to give to the health care restructuring commission are the powers under section 6 of the Public Hospitals Act?

Mrs Caplan: If that's what you meant, to be that specific. You just don't want to be tied down and strait-jacketed.

Mrs Johns: Well, we need flexibility to consider changes that happen within hospital restructuring.

Ms Lankin: "Give me the blank cheque. Don't tell me what the number is. I'll cash it when I want. I'll write the number in. I don't want to be straitjacketed. I want flexibility. I want to be able to do whatever I want, whenever I want to do it." I'm sorry, but I'm going to continue to make this point: You don't know. You don't know what powers you're going to give them. You don't know what acts you're going to refer to. You have a responsibility to know that answer if you're asking us to write you the blank cheque to say you can give any powers you want from the minister down to this particular restructuring commission, under any act in the province of Ontario. You have a responsibility to know what you're going to do with it and what powers you're going to give.

Mrs Johns: The Ministry of Health at this particular point has not gone through the restructuring so they don't know what's going to happen. You're right. They don't know what's going to happen. They need the flexibility to adapt to different situations that are going to happen in different communities. That's correct.

Mr Cooke: You would never have supported this if it came from anybody else.

Ms Lankin: I wish I had the Hansards in front of me, the Jim Wilson quote about hanging from the ceiling by the fingernails if you tried to take these kinds of powers into the government and into ministers' offices. This is incredible.

Ms Johns, do you understand the complete effrontery to the legislative process, to the drafting of laws of the land, to the balance of interest between public accountability and democracy and government powers and abuse of government powers? Do you understand what it is you're bringing forward in this legislation when you ask us to give you such carte blanche and you can't even answer what powers under what acts it is? You don't know, you haven't figured it out, but you want us to just say okay and give it to you, because at some time you'll figure out what it is you want to use under this section?

Mrs Johns: What I understand, Mrs Lankin, is that this is a changing environment, that we need to restructure hospitals. No, there is no set way that we're going to do that because every community is different, every community is being drawn by their own planning process, every community has different needs that they have to meet, and we're going to have to be adaptable as legislators to be able to handle that and move this process forward. That's what I understand.

Ms Lankin: I've asked you a couple of times to give me examples of the powers and the only example you give is section 6 under the Public Hospitals Act, which is the power to merge or close hospitals or direct a ceasing of the provision of services.

Please give me examples of the other kinds of powers you think you're going to need to deal with things that are so unforeseen in health care restructuring that we don't know what sorts of things we would possibly have to do to be able to merge services, rationalize services, reorient where services are delivered, whether it's from the hospital institution or from the community. What is it that's so unforeseen out there that you're going to need different powers for? What are the circumstances that vary so much from community to community?

Mrs Johns: For example, my community in rural Ontario is very different from yours, Mrs Lankin. We have different needs, we have different demands on the health care system. There are going to be different needs in all areas. We haven't even started the process in Huron county at this point. We may merge services as opposed to amalgamations as opposed to closing hospitals. As we've seen in northern Ontario, we may put a continuum of service right in a hospital from chronic care to acute, as they have in specific areas. A number of different things are solutions that aren't the solutions for Toronto, and the Toronto solutions are not the same as they will be for rural and northern Ontario. All those different things are flexible. We have to be flexible to allow the system to—

Ms Lankin: Ms Johns, can you answer the question of what powers you need to be able to do all those different things in the different regions? That's what I'm trying to get at. Please don't lecture me about regional variations.

I know that as well as you do. I don't need to hear that from you.

I want an answer to the question of what the kinds of powers are that you're going to delegate to this commission under what pieces of legislation. If you don't know the answer to that, just tell us you don't know the answer and admit that this process is a bad process because you're asking for a blank cheque and you don't know what powers you're going to delegate to this commission.

Mrs Johns: I am not admitting this is a bad process. I'm admitting that this is a flexible process that we need to be able to restructure in Ontario. It's not a bad process. We need the flexibility to be able to move the system forward as we come against roadblocks of hospitals and health systems that we need to restructure in Ontario.

Ms Lankin: Quite amazing. You cannot answer the question of what powers.

Interjection.

Ms Lankin: Yeah? Really? That's too bad, and I'm sorry you don't like it, but let me tell you that a lot of us don't like the abuse of your government continuing to write legislation that simply gives you all the powers to do anything you want whenever you want to do it, and to refuse to have the minister here and to have a parliamentary assistant who cannot answer the question of what powers she envisions giving to this commission. You are moving an amendment because you are saying it's not enough to say "any duties as assigned to this commission under this act or any other act." You're now saying that you want to be able to assign powers under this act or any other act, and the only example she can give us every time she's pushed is section 6 of the Public Hospitals Act. So I say write it in. If that's what you need, write it in. But tell us what powers you are going to use.

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This is absolutely wrong in terms of a process of drafting laws of the land, not to tell the people what the laws are that apply, not to say what powers, which are ministerial powers, that you're going to delegate to a commission, to leave that wide open. I don't know how you can defend it, and I don't know how you can defend it back in your communities when you ran on a platform of accountability of government. This runs absolutely contrary to everything you have indicated you stand for as a political party and it runs contrary to the tradition of drafting laws in the land of Ontario.

Mr Phillips: To follow up a little on Ms Lankin's question, I would appreciate some examples of the other laws. For example, I think you talked about long-term care. Could that be considered by the restructuring group?

Mrs Johns: Yes.

Mr Phillips: You implied nursing homes. Could nursing homes be covered?

Mrs Johns: As part of long-term care, yes.

Mr Phillips: Could home care be considered here?

Mrs Johns: Yes.

Mr Phillips: Could community health centres be considered here?

Mrs Johns: Yes.

Mr Phillips: Could ambulance service be considered here?

Mrs Johns: Yes. The continuum of health care in Ontario could be considered.

Mr Phillips: I'm not knowledgeable in the area. Can you just give us a list of things that could be considered here?

Mrs Johns: Peter, do you want to give a full list so I don't leave anything out?

Mrs Caplan: Let me ask a generic question that might be helpful. Is there any piece of health legislation that would not be?

The Chair: Mrs Caplan, Mr Phillips had the floor.

Mr Phillips: Thank you, Mr Chair. Just kidding, Elinor.

Mr Finkle: Normally, in the more comprehensive hospital restructuring plans we've seen, they call for reinvestment in a great variety of services that will be enhanced through changes in the hospital system. The most prominent of those are institutional long-term-care services, nursing homes, homes for the aged and home care. The Metro report, for instance, calls for a reinvestment plan of some \$75 million to those two sectors, so they are affected by restructuring.

Mr Phillips: I appreciate that. The reason I raise this is because I appreciate that the government says it's dealing with a crisis and all that, but every government deals with crises. They're just different crises. There's never been a government elected that hasn't had crises on its hands. But the danger in all of this is that, to solve your "crisis," you override a more important principle.

If I can summarize what I think this commission now can do, it essentially, in a community, can dictate the entire service for that community: home care, nursing homes, the ambulance service, the long-term care, the independent health facilities. It's not just "may perform any duties," it's now "and may exercise any powers." For the public out there listening to this, what you're asking us to do is to essentially truly turn over the entire health care system in a community to the commission—and the commission can be one person—and the commission's report is final. I'm not exaggerating this, because this is exactly what you're telling us you want the power to do. That is unacceptable to the public.

The Canadian Bar Association said, from a civil libertarian perspective, the centralization of power is virtually untrampled. I can't imagine us ever approving this. I can't imagine the government members ever agreeing to essentially turn over to the commission the power to completely reconfigure health care.

It's not just the hospitals. I suspect that the people who came and presented to the committee thought they were dealing with hospital restructuring. I'm not sure my nursing homes knew that this commission could completely restructure them. Had they known that, I think they'd have been there. I'm not sure that all the home care organizations in Ontario knew the commission could completely restructure them; they'd have been there.

You have the nerve to want us to approve this: "The commission shall perform any duties" and may exercise any powers "assigned to it under this or any other act." Here we are, at three minutes to 6 on a Tuesday afternoon, truly turning over to a commission—

Mrs Caplan: Or an individual.

Mr Phillips: In the end, it could be an individual—the absolute power to completely restructure fundamental systems in our community. Surely you don't want that. Surely that's not what you would ever ask the Legislature to give you.

I was not on the health section of this committee. For anybody watching this, we split into two; there was a health section and a non-health section. But I am absolutely astonished at the power of this. I'm absolutely

astonished that you want to add powers to this commission. I now, more than ever, wish the Minister of Health, sitting over there in his office, would get himself off his chair and get on over here and explain why in the world we should ever give these powers to him.

The Chair: Thank you, Mr Phillips. It being 6 o'clock, we are adjourned until tomorrow morning at 10 o'clock.

The committee adjourned at 1757.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

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*Young, Terence H. (Halton Centre / Centre PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Caplan, Elinor (Oriole L) for Mr Sergio

Clement, Tony (Brampton South / -Sud PC) for Mr Kells

Cooke, David S. (Windsor-Riverside ND) for Mr Wood

Ecker, Janet (Durham West / -Ouest PC) for Mr Stewart

Gerretsen, John (Kingston and The Islands / Kingston et Les Îles L) for Mrs Pupatello

Johns, Helen (Huron PC) for Mr Danford

Lankin, Frances (Beaches-Woodbine ND) for Mr Marchese

Phillips, Gerry (Scarborough-Agincourt L) for Mr Grandmaître

Sampson, Rob (Mississauga West / -Ouest PC) for Mr Flaherty

Also taking part / Autre participants et participantes:

Silipo, Tony (Dovercourt ND)

Ministry of Health:

Czucar, Gail, legal counsel

Finkle, Peter, director, central region, institutional health group

Clerk / Greffière: Grannum, Tonia

Clerk pro tem/ Greffier par intérim: Decker, Todd

Staff / Personnel: Baldwin, Elizabeth, legislative counsel

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Wednesday 24 January 1996

Journal des débats (Hansard)

Mercredi 24 janvier 1996

Standing committee on general government

Savings and Restructuring Act, 1995

Comité permanent des affaires gouvernementales

Loi de 1995 sur les économies
et la restructuration



Chair: Jack Carroll
Clerk: Tonia Grannum

Président : Jack Carroll
Greffière : Tonia Grannum

This report has been reprinted because approximately three pages, starting on page G-1340, were omitted in the original publication. Page numbering has been revised accordingly but does not affect subsequent reports.

Ce rapport est une réimpression parce que trois pages, à partir de G-1340, ont été omises dans le rapport original. Par conséquent, les pages ont été renumérotées, mais cette correction n'affectera pas les rapports à venir.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENT

Wednesday 24 January 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Mercredi 24 janvier 1996

The committee met at 1000 in room 151.

SAVINGS AND RESTRUCTURING ACT, 1995

LOI DE 1995 SUR LES ÉCONOMIES
ET LA RESTRUCTURATION

Consideration of Bill 26, An Act to achieve Fiscal Savings and to promote Economic Prosperity through Public Sector Restructuring, Streamlining and Efficiency and to implement other aspects of the Government's Economic Agenda / Projet de loi 26, Loi visant à réaliser des économies budgétaires et à favoriser la prospérité économique par la restructuration, la rationalisation et l'efficacité du secteur public et visant à mettre en oeuvre d'autres aspects du programme économique du gouvernement.

The Chair (Mr Jack Carroll): Good morning, everyone. Welcome back to the hearings on clause-by-clause analysis of Bill 26.

Mrs Lyn McLeod (Fort William): I, as you know, have tabled a motion and would like to place that motion before the committee as we begin our deliberations.

The Chair: Okay, Mrs McLeod, since we're in the middle of debating a motion, you will have to wait until you can have the floor.

Mrs McLeod: May I place that immediately after the next motion is voted on then?

The Chair: Yes.

Mrs McLeod: Thank you.

Ms Frances Lankin (Beaches-Woodbine): Mr Chair, sorry, I couldn't hear.

The Chair: Mrs McLeod has a motion she wanted to put before the committee and I just advised her that since we were in the middle of debating a motion, she would have to wait until such time as we were finished with that particular debate.

In order to alleviate some of the congestion we've had at the front, we offered the parliamentary assistant and any staff people she wanted the option of sitting at the witness table at the back. It makes it a little easier for the Chair, who seems to be accumulating more and more books and paper up here. He needs to spread out.

Ms Lankin: We're all having that problem.

The Chair: We're all having the same problem.

Mr Gerry Phillips (Scarborough-Agincourt): Mr Chair, just so I understand the timing, we will deal with the one amendment and then we'll deal with Ms McLeod's motion. Is that correct?

The Chair: When we vote on the amendment, Ms McLeod can request the floor and introduce her motion at that particular point in time.

We were in the middle of discussing a proposed amendment by the government to schedule F, section 1

of the bill. The speaking order that had been set up last night was Mr Clement, followed by Mr Cooke and Mrs Caplan. So Mr Clement, you have the floor.

Mr Tony Clement (Brampton South): I wanted to state for the record that I agree completely with the thrust of Ms Johns's comments respecting this particular amendment and its effect with respect to the issue of the Health Services Restructuring Commission. I agree with her that there has to be adaptability that is built into this legislation to allow the minister and the government, which is ultimately accountable to the people and accountable to the Legislature, to choose the best available persons, who may or may not fit the criterion which Ms Lankin wished to set out in her version of this particular motion.

There was some discussion yesterday afternoon about whether this in fact reflected some or none of the testimony that we heard during our three weeks of public hearings. To that issue, I wish to remind the committee and draw to the attention of those on this committee who were not part of the health care portion of our little road trip and our session in Toronto some comments by hospital persons as well as district health council persons. Ms Johns quite correctly mentioned Mr Labelle, CEO of Ottawa General, yesterday afternoon, but I've got some interesting words to share with the committee from Tom Closson, who is the CEO of Sunnybrook Health Science Centre. We saw him closer to the beginning of our process, so perhaps it is opportune to remind the committee at this time of some of the things that he said.

He said, "Given the enormous debt this province has, this is a critical emergency." He goes on to say that the debt "needs to be addressed with radical measures." I'm quoting him now: "I think this legislation is radical, but I think it's necessary if we are going to protect the public and ensure that they have good access to health care in Ontario."

I would draw the attention of the committee to Ken Ferguson's comments that we heard in Sudbury. He is a part of the Manitoulin-Sudbury District Health Council. "Generally, we support the establishment of the commission. Implementation of hospital restructuring is chaotic"—those are his words, not mine—"throughout Ontario because the...legislation impedes the sweeping changes that are needed"—further evidence, I would submit, from some of the deputations that we were privy to that there is a recognition of the need for far-reaching change and restructuring within the hospital services that are offered to the public.

Indeed, that was a common refrain. I hope it would not be too much of a shock to the former Health ministers who serve on our committee to see that change. There

really has been a sea change of attitude within the hospital sector on the need for change. It's almost too bad that we didn't have such a change of attitude 10 years ago. Perhaps more could've been done at that point, rather than today. But the fact of the matter is that today there is a general recognition within the hospital sector that real change, and some even termed it radical change, is needed to restructure the hospital sector and then to reinvest the savings that accrue from such restructuring to those areas in the health care services that are genuinely needed in the communities.

I'm reiterating somewhat what Ms Johns said, but it does bear repeating that we did get a lot of recommendations during the hearings to keep the mandate of the Health Services Restructuring Commission as broad as possible. In fact, they were concerned that we were going to narrow it in our amendments. I respectfully remind the committee of some of the deputations of nurses who came forward, those involved in long-term care who were concerned that they were going to be left out of the restructuring and left out of the impacts of the restructuring. They see the real need to be part of that restructuring so that long-term care is not forgotten.

The community care, community health centres: We heard a lot from them about how this is more than just a hospital restructuring issue, this is a whole health services restructuring issue. The skills that are required for that go far beyond, perhaps—not necessarily in every case—simply what was contemplated among the district health councils or some of the mandates of the district health councils that have been extant to date.

All of that is to reiterate that there is a broad mandate that is required if this job is going to be successful. My point of view is there is no point in doing this, no point in setting all this out, no point in starting this process unless we have confidence that we can be successful at the end, because it is a quite substantial change in our health care system. We have to be sure that we have the tools necessary to get the job done; otherwise, we'll have wasted another four years. Quite frankly, the people of Ontario cannot afford another four-year wait on this.

My final point is this: There were a number of suggestions from my friends across the way during Ms Johns's presentation of this amendment that somehow we were missing accountability mechanisms for the Health Services Restructuring Commission.

Firstly, the Minister of Health, as we all know, is accountable for anything that takes place in his ministry. That accountability is part of our democratic and parliamentary tradition and I see nothing in this legislation that derogates from that.

Secondly, and I put again on the record, just as I have done over the past two weeks, the fact that section 8.1 of the Ministry of Health Act is still in existence. Section 8.1 is the section that recognizes and creates district health councils, gives them the power to analyse, to search out information and to plan and to make recommendations to the Minister of Health respecting the health services in that district.

Nothing in this legislation, nothing in Bill 26, nothing in schedule F derogates from the roles, responsibilities and duties of the district health council in any particular

region. Those councils have local representation, they have community representation, they have experts in the field, no question about it, and they continue to have their role. I foresee that once we get the Health Services Restructuring Commission rolling, there will be a very visible, inextricable link between the role and work of the respective district health councils and the role and work of the Health Services Restructuring Commission. That is a point that Ms Johns has already made. I reiterate it and I support her on this amendment.

The Chair: Mrs Caplan.

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Mrs Elinor Caplan (Oriole): I'm going to yield my time to Ms McLeod.

Mrs McLeod: Mrs Caplan yields her time because she knows that I have been watching the committee hearings over the last couple of days and I am appalled at the continued efforts of the Conservative members of this committee to selectively distort the public views that have been offered to this committee over three weeks of public hearings. So let me respond very directly to the distorted views which Mr Clement has just attempted to put on the record as reflecting the public input that we've had over the last three weeks.

I suggest to him that we have indeed heard from many people in hospital administration who have been trying to cope with the stresses of bringing about a hospital restructuring, which everybody knows is needed. They have seen a role for government, and all would agree that there's a role for government in that process, but with one possible exception, who I think has been cited but does not represent the restructuring efforts of the Ottawa-Carleton region. They have all said that the role of government and the role of the Ministry of Health and the minister should be a facilitating role, not a role where the minister steps in and unilaterally makes decisions in what he deems somehow to be in the public interest. We have heard concern after concern expressed about the fact that there is no indication of what will guide the minister in determining what is in the public interest of that community.

We have also heard very clearly on the issue of delegation that again, with one possible exception, there have been unanimous views that there should not be the ability of the Minister of Health to delegate such important decision-making powers to a commission or to any other individual. If you check the record, Mr Chairman, that will come through loudly and clearly, including in the initial submission from the Ontario Hospital Association.

I thought it was reprehensible on the part of the government, when they tabled amendments on this issue in Kitchener, to hold back amendments which strengthened the ability of the Minister of Health to delegate his decision-making powers until later on in the day, after they had attempted to appease the people who were concerned about the provisions on hospital restructuring by saying they would be sunsetted after four years, and, "Don't worry, if we're going to come in and shut down your hospital, we'll give you 30 days' notice." The fact that the minister can delegate even more extensively than was originally in this bill was left to amendments that were tabled later in the day.

I would also want clearly on the record that presentation after presentation said that they were concerned about the ability to delegate any powers to the commission and that the role of the commission had not been clearly set out. People asked that the role of the commission be defined in legislation, that there be clarity as to what this commission's role would be in the restructuring process, and that has not been set out in this legislation, nor has it been clarified in any attempt by the government to help us all understand exactly what the commission's role will be.

This takes me to my last point, in response to the last point of Mr Clement, which is the role of the district health council. Again, presenter after presenter said to us, "We want the local planning capacity respected. We don't want decisions made by the Minister of Health in Queen's Park imposed on our communities without good community planning," and repeatedly members of the government side said: "Don't worry. The DHC will be there. We're going to build on the recommendations of the DHC."

The DHC reference that Mr Clement cited is in an advisory capacity only. It is not given the kinds of potential powers that the restructuring commission is given under Bill 26. The minister cannot delegate to the district health council the powers that he could delegate to the restructuring commission, and therefore there is no guarantee that the planning process of the DHC or any other local body will be respected in the work that is done by the restructuring commission or the decisions that are imposed on a community by the Minister of Health. I just wanted that clearly on the record because I think it is a more accurate reflection of the public concerns that were expressed to this committee.

The Chair: Any further discussion on the amendment?

Shall the amendment proposed by Mrs Johns to schedule F, section 1, subsection 8(7) of the act, carry?

We'll continue with our agreement for recorded votes.

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Phillips, Silipo.

The Chair: The amendment carries.

Mrs McLeod: I would like to move that the Premier be requested to appear before the standing committee on general government on January 24, 1996, or January 25, 1996, to answer questions regarding Bill 26, the Savings and Restructuring Act, 1995, which forms the government's major legislative agenda.

Mr Chair, I think you will appreciate my earlier intervention that my frustration level in watching the proceedings over the last two days has been building, and I have been equally dismayed to realize that as we began these proceedings there would be no minister responsible for carriage of any portion of this bill, or for the future implementation of any portion of this bill, who was prepared to come before the committee to answer questions that have been raised not only by committee

members but in fact by members of the public day after day in public hearings.

I would have thought it was a minimum of responsibility for the ministers to be prepared to come and answer questions. I thought it was irresponsible for those ministers to expect that their parliamentary assistants would have to respond to those kinds of detailed questions, and questions which would affect the future accountability of the ministers themselves. I thought that was putting the parliamentary assistants in a rather difficult position. It was also clear they were not being given the kind of information they needed in order to be able to respond to those questions, and in fact I thought it was quite significant that in the vote that was missed it was because the government members were out in the hall rather desperately trying to figure out what was the correct message to give.

I think the public who have made presentations to this committee, who have put tremendous effort into getting hold of this bill, trying to understand it, and then raising the concerns that emerged—every piece of this bill that you read raises new questions—were looking to the government to give the correct answer. I think they wanted actual answers to what the impact of this bill would be. Clearly, the parliamentary assistants and the government members of this committee have not been given those answers to respond in the absence of their ministers.

I feel it is only appropriate that the Premier, who has accountability and ultimate responsibility for all the legislation that is before the House, and in fact for the implementation of this legislation as well as for the agenda that is the basis for bringing forward these measures, should appear before this committee and answer the questions directly. I think it's also important he do that because it has become apparent since his return that the Premier continues to have a different view of the impact of parts of this legislation than appears to be the reality of the legislation itself. Perhaps that's because the questions that have been raised as more and more people have examined the legislation have brought to light many implications of the legislation which weren't apparent when the legislation was first presented. I think it would be important, so there is not continued public confusion, for the Premier to either respond according to his view of what this legislation means or, again, to be held accountable and responsible for the actual content of this legislation and its future impact.

I understand that the ministers have said they can't be present because of scheduling difficulties. I would think that if it's difficult for several ministers to arrange their schedules to appear even over the course of an entire week, it might be possible for one individual, the Premier of this province, who is ultimately responsible for the effect this legislation will have on this province, to appear before the committee to answer not just our questions but the questions the public has raised.

Ms Lankin: We will be supporting this motion and I want to indicate that in reviewing the news coverage of the Premier's comments over the last day, I have grave concern on the part of our caucus about whether or not anyone in the government actually knows whether this

bill is going to be able to allow municipalities to implement tolls on roads, whether or not doctors are going to be responsible for reviewing files of chiropractors—on and on and on; issue after issue. The Premier has made it very clear that he holds certain views with respect to this act that are absolutely contrary to what we have heard from presenter after presenter over the course of the weeks of hearings, and in fact what we've heard from government members of the committee in terms of their interpretation of sections of the act.

We had the amazing spectacle, when this bill was first introduced by the Chair of Management Board—when issues were put to him, it was very clear he had no understanding of various aspects of the bill. We had the clear and amazing spectacle in the House of the Minister of Municipal Affairs who couldn't answer questions put directly to him about parts of the bill, who then swore that his bill did not allow for municipal taxes to be implemented in the likes of poll taxes and others and that he'd resign if he was wrong and that the bill didn't need to be amended and that at some point in time, about two weeks ago, if the opposition wanted clarification he'd look at that. The opposition didn't put any amendments forward. In fact the minister came forward and amended it himself to prove that he was wrong about his interpretation to begin with. We haven't had an answer from him yet about whether he's going to resign.

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The Minister of Health responded to questions early on about the \$150 administration fee in the section of the Health Care Accessibility Act dealing with hospitals and tried to defend why it is that a patient might have to pay that \$150 when the administration fee applies to doctors and to the procedures with respect to a hospital and doesn't have anything to do with patients, yet he was defending it, bravely I might say, but he had it wrong.

And now we have the Premier making statements that absolutely contradict what those of us who have spent all this time examining the bill and listening to the public coming and giving us their interpretation of the implications of aspects of this bill in their jurisdiction have told us and what we've come to understand. The Premier has a different understanding and reassures the people of Ontario, "That's not my understanding of the bill."

I'd like to know who in the government does understand this bill. If it's not the Premier, then perhaps it's Mr Long who should be coming before this committee with a team of whiz kids and explaining what the heck is going on here. There are four seats there; we could get all four of them there. Or they could accompany the Premier and answer the questions and advise him.

I don't mean to make light of the motion, because I think it's quite serious. I think this bill, as I've said many times, has been put together in a very hasty fashion with departments of ministries all writing different sections of it with nobody cross-referencing the various wish lists that have come forward from departments of ministries, no one understanding the overall effect, and even some of the very specific effects that we keep uncovering day by day by day as these hearings continue. I think the Premier should come and should explain his understanding of the bill and should be accountable for some of the

amazing problems that this bill will create for the public of Ontario and for the government, quite frankly.

I think he should explain, for example, what Mrs Johns was unable to explain yesterday. Why would you be setting up a commission just taking broad powers to be assigned to the commission and not be able to explain what powers it is that that commission is going to be able to exercise, what powers it is that the minister is going to delegate to that commission? Every time she was asked we got one answer: section 6 of the Public Hospitals Act. Well then, make that clear.

This is bad law. This has been poorly put together. It's clear that there is no one in government who has an understanding of the full impact of this. If there is anyone, it should be the Premier. He has ultimate responsibility, ultimate accountability. We've heard members opposite talk about the absolute accountability of ministers of the crown and members of the executive council to the Legislature through question period, through the opportunity to answer questions. Well, we're asking for that opportunity here during the course of these hearings, for the Premier to come forward, for him to give us some indication whether or not he actually understands this bill. Quite frankly, I suspect we'll find out he doesn't, and that being the case, I think the only consideration after that is, how do we amend the process to in fact give the government enough time to get itself under control and to get an understanding of the bill and to proceed with those aspects that it believes it actually needs and to give the other aspects the appropriate time for public debate and consideration and legislative debate and consideration that from day one we have been calling for?

Mr Phillips: This whole bill has turned into kind of comedy hour in that originally the government presented this thing as if they had actually thought about it and said: "Listen, this is so good we don't even need a debate on it. We're going to pass this thing in two weeks. It's the perfect bill." As we peel it back a little bit, it's clear that the government has no idea what's in it. Certainly I feel badly for the members who are trying to defend it because every day we hear—we had the spectacle here two days ago of the explanation being given on toll roads that it's permitted and then the Premier 24 hours later saying: "Well, I don't know. Is it? I don't know." It is absolutely clear that nobody in the government understands what is in this bill and there's only one way to clear it up. The Premier has to come and tell us what in the world he intends with this bill because every day he says one thing out there and a different thing's happening in here. It's undeniable.

Yesterday he expressed some amazement that the Thorold fire department was planning to charge a few of fee of \$900 an hour. Well, we were told weeks ago that it was the intent of this bill to permit that. In fact, the government, when they originally briefed us—these are your notes; this is your own briefing document, "The legislative amendments will generally provide unlimited flexibility, thereby overriding all existing limitations on user fees." So why in the world would the Premier be surprised yesterday when the Thorold fire group said, "We are going to charge \$900 an hour to put out a fire"?

On one hand, you're telling us that's what the intent is—in fact, I'm sure that Al Leach went to the municipalities and said: "You keep quiet on the cuts to grants. Keep your mouth shut on that and we'll give you what you've been looking for, and that's unlimited flexibility on user fees, on licences." Frankly, I think the deal was to allow taxes too because we had three mayors come before us very quickly after the bill was tabled saying: "Thank you. Thank you for the opportunity for gas tax." It was only when public pressure built that you were forced to back down on it.

I just want the public to be aware of what's going to happen when this bill passes because every municipality's back is to the wall. Here's what we heard when we went around the province. North York: A false alarm fee of \$300. The mayor is quoted as saying, "We're going to put a fee on just about everything that moves."

We were in Kingston and I found one of the most interesting ones was the Kingston council. They say they can save two jobs out of 99 that they're going to have to eliminate. They're going to have to cut 99 jobs, but they can save two because of this great bill, because they're going to jack the rate up on death certificates and marriages. So to pay for your big tax break, the people who die in Kingston—the estate will know. They probably won't recognize it, but the estate will know that they've helped to pay for your tax break. They go on to say that this is great because it allows the police to set up some safe-driving seminars at a cost of \$100 each, a really good new revenue source.

It goes on to say, "We're of the opinion the provisions would enable us to charge landlords and residences that provide student housing, including the university. We can charge property standards enforcement so that an additional user fee could be instituted through the universities directly to the students living in residence."

We heard the mayor of Guelph talk about taking a licence fee from \$20 to \$500. We heard the other day about this permits toll roads. Believe me, we were about ready to talk about technology here that will permit toll roads. First, it now will be legal to put a toll road in a municipality and, secondly, you are putting in place the necessary law to permit toll roads through technology. So it will be very simple for municipalities to say, "That lane there is designated only for those who pay the toll," and that'll be the express lane and the technology's there.

My point of this is this: People in Ontario should recognize what you've promised the municipalities. You've essentially said: "We are going to cut your grants in half. We are not going to allow you to take property tax up." In fact, the public would be in an outrage about that. "But we are going to allow what you call unlimited flexibility for fees."

For the Premier yesterday to be surprised when someone raised the point about the fire fee in Thorold is incredible. It can only be one of two things. He doesn't know the bill or somehow or other he was trying to be misleading on it. That's the only one of the two explanations because it's clear, as the members across know, that this bill not only permits it, it encourages it. You have told the municipalities that this is how they can make up the revenue shortfall. You've told them that. We've had

dozens of examples around the province; I've just quoted a few here. Come January 30, the fee door opens and the pen is open and we have runaway fees in Ontario. The municipalities have given us fair warning that that's what's intended.

So why should the Premier come here? Very simply, what does he intend by this bill? Is he saying he doesn't want those fees? By the way, when you're in opposition you tend to keep these old clippings. This is what the Premier said at one time: "Fee Hike Called the Same as Tax Hike." I guess that was in the Taxfighter days.

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Ms Lankin: That was then.

Mr Phillips: That was then, as someone said. "Fee Hike Called the Same as Tax Hike." But what is one of the cornerstones of this bill is that municipalities have said, "Please, please give us the right for unlimited flexibility on fees," and you are giving them that right. I think the Premier owes the people of Ontario an explanation.

We now have fewer than three days to get what is the government's intent around this bill. He needs to come here and say: "Here's what I intended. If the bill isn't doing what I intended, we can amend it." But he owes the people of Ontario at least the courtesy of coming and saying what he intends. If he intends unlimited flexibility for fees, then when someone asks him about the \$900 fee for the Thorold fire department, he should say: "Yes, that's my Ontario. Yours to discover. You'll discover these fees, but that's my Ontario and don't be surprised by it." If he didn't intend the fee, then surely it's in everybody's interest to change the bill.

I've taken just one small part of the bill, but I think it's symptomatic of the way the government tried to do it. They didn't want people to know what was in here. You really didn't. Now we've got from you I think 139 amendments proving that you didn't know what was in the bill, and you've been caught on some things that you're so embarrassed about you've got to change. You were caught on the gas tax—no question of that.

Perhaps if we'd had the ministers here earlier and an opportunity to explain, but the clock is running, this bill is going to be passed on January 29, and there is only one person who can clear the air, and that's the Premier. He's around. He's got time. Have him in and have him explain what he intends. Otherwise he'll play this game of, whenever there's a hot thing, he'll say, "I didn't know it was in there," and try and duck the responsibility. There's only one way to hold him accountable, and that's for him to show up here and give the public an opportunity to find out what in the world he intended with this bill.

Mr Clement: I would speak against this motion.

Mrs Caplan: Why?

Mr Clement: I'll tell you why. As we know, it has been the parliamentary assistants who have been involved for three weeks of public hearings.

Mrs Caplan: That is not true.

The Chair: Mrs Caplan, Mr Clement has the floor.

Mrs Caplan: But he is not telling the truth. The parliamentary assistants did not have carriage. No one had carriage of this bill.

Mr Clement: In fact, it was Ms Caplan who insisted that parliamentary assistants start to have carriage of the bill. Starting on Monday we have done precisely that.

Interjections.

Mr Clement: Mr Chairman, could we have some order? I respectfully listened to their points of view even though I disagree profoundly with them.

Mrs Caplan: As long as he tells the truth, I'll stay quiet.

The Chair: Mrs Caplan, you will have your chance to speak when Mr Clement is finished. I expect you to wait till then, please. Thank you.

Mr Clement: Thank you, Mr Chairman. The parliamentary assistants are in the unique position to have heard the presentations throughout Ontario, 12 different cities, and to have the perspective of their respective ministries to put forward why this legislation is critical as a first stage. I disagree that it's the government's major legislative agenda as found in Mrs McLeod's motion, but it is the first stage of getting Ontario back on track. It is perfectly normal and habitual for the parliamentary assistants to have carriage of this legislation in this forum. That is how Mr Wessinger, who was the parliamentary assistant for Health under the previous regime, operated, and Ms Lankin knows that very well.

The ministers and the Premier will be in the House on January 29. There is a question period that will be available for the opposition. There is accountability built into our parliamentary system, and there's nothing we are doing today that derogates from that accountability—nothing.

Ms Lankin made a reference—and I hope I don't misquote her; it certainly would not be intentional. I gathered from her comments that she felt the parliamentary assistants thus far have not given the straight answers she was looking for and that consequently we need the Premier here to do that.

My take on it is that they did give straight answers, but she didn't like the answers. She didn't like the answers we gave her respecting why the Health Services Restructuring Commission is characterized the way it is. She didn't like those answers, which is fine. That is the way democracy works. The opposition is not going to agree with the government every minute of every day. It is her right and her responsibility as a member of the opposition not to like our answers, but answers we have given and answers we are giving.

May I say this with respect to what Mr Phillips has said, and I've said this before and I guess I risk howls of protest by saying this again: If there is any confusion being sown with respect to the nature of this bill, I believe the opposition bears some responsibility for that because of the myth-making that has been going on over the last month.

Mrs McLeod: This is ludicrous. Just let it pass without asking questions and there won't be any—

Mr Clement: For a party that cherishes democracy so much, Mrs McLeod is not giving me an opportunity to speak, and I find that offensive.

I find that the myth-making that has occurred has been both dishonest and misleading.

Mrs McLeod: There would have been no opportunity for anybody to be heard.

Mr Clement: For example, Mr Phillips talks about the Thorold fire charges when he knows full well or should know that those charges had been possible prior to Bill 26 being a twinkle in the Finance minister's eye. He knows that.

For example, we have heard over the past three weeks from the opposition and their friends that we are destroying DHCs when the opposition knows full well that DHCs are continued in the Ministry of Health Act under section 8.1.

Mrs Caplan: They have no role in this bill.

Mr Clement: For example, we have heard continually over the last three weeks that we are threatening personal medical records when there was a deemed—

Mrs Caplan: The privacy commissioner said that was so.

The Chair: Mrs Caplan, you will get your chance to speak.

Mrs McLeod: Mr Chairman, on a point of order, and I ask this in all honesty: I did not place the motion in order to bring about a substantive debate on portions of the bill. We know that debate is going to go on re the amendments. It was a question on whether the Premier can be requested, simply requested, and I would hope we could, in the interests of time, focus our debate on whether the Premier appropriately would come to the committee.

The Chair: Basically, Mr Clement's comments are germane to the argument.

Mr Clement: I believe I was mentioning how I felt personally, that the opposition's arguments which have created the myth-making have been dishonest and misleading.

Mr Phillips: Point of order.

Mr Clement: I mentioned—

The Chair: Excuse me, Mr Clement. Mr Phillips.

Mr Phillips: Mayor Lastman—

Mr Clement: Mr Chairman, I am not yielding the floor to Mr Phillips at this time.

The Chair: Are you raising a point of order, Mr Phillips?

Mr Phillips: Yes. He's not telling the truth. He said the bill does not allow people like Mel Lastman to put a fee on false alarms.

The Chair: Mr Phillips, that is not a point of order.

Mr Clement: I believe I was talking about the Thorold fire charges. I also went on to mention the district health councils, and that under the current legislation there are deemed-to-disclose provisions re personal medical records, which the opposition seemed to deny existed in the first place.

Mr Phillips also has been going on about how we have admitted that there's unlimited flexibility for municipalities when in fact, when I checked the Hansard, it was his term, "unlimited flexibility."

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Mr Phillips: On a point of order on that, Mr Chair: This is a government briefing, your own government briefing. You can't get away with this. The compendium on schedule M has those words in it. You cannot get

away with that. You can't get away with that. That's your own compendium.

Mr Clement: Mr Chair, I'd like to read from the Hansard, if I may, just to clear up this point for Mr Phillips. I'm reading from December 18, 1995.

"Mr Phillips: Okay, so there's unlimited flexibility here.

"Hon Mr Leach: As much as they can, knowing that they'll act responsibly and also knowing that if they don't act responsibly"—

Mrs McLeod: Point of order.

The Chair: Mrs McLeod, is it dealing with this point of order?

Mr Clement:—"there are methods within the legislation to limit their ability, if need be."

My only point, Mr Chair—

Mr Phillips: Mr Chair, I am quoting from the government's compendium, the schedule M compendium. You handed this out. It says here, "This legislative amendment will generally provide unlimited flexibility, thereby overriding all existing limitations on user fees." If I can't believe what you give us in writing, how can we possibly trust you on anything?

Mr Clement: I'm quoting Mr Leach from the hearings, Mr Phillips. This is the record.

Mr Phillips: Well, who's lying? Is this a lie, or is what he's saying a lie?

Mr Clement: Mr Chairman, to perhaps wrap up my remarks, I find it incredible that I have been listening patiently over the last few minutes to their point of view—

Mrs Caplan: But you're telling lies.

Mr Clement:—which is their point of view. That's what opposition is for, to have a particular point of view which is different from the government. I respect them for that. We were in opposition for 10 years and I understand—

Mrs Caplan: Nothing coming out of your mouth is truth.

Mrs Janet Ecker (Durham West): So your opinion is truth and our opinion is a lie. Is that what you're saying?

Mrs Caplan: What he's saying is misrepresenting the facts.

Mr Clement: The public will decide, not Elinor Caplan, and I'm quite willing to put my faith in the public on this point. I just want to make it clear I understand why the opposition always has to oppose what the government is doing, always has to say that I'm a liar, I'm a fascist, I'm a jackbooted Nazi. I understand why they have to do that. But I'll let the people decide, not Mrs Caplan.

Mr Phillips: On a point of privilege, Mr Chair, if I might: He has said that I have misled. I want to read into the record what I quoted from. Mr Chair, it's very important to me, and I've never called him any of the names he said. The compendium, Savings and Restructuring Act, schedule M: This was the briefing the government gave to us. Under "User fees," this is what they said, and I could read the whole thing, but I'll just read a quote: "This legislative amendment"—this is the instruction they gave to us—"will generally provide

unlimited flexibility thereby overriding all existing limitations on user fees."

I would ask the member to withdraw the comments about me misleading on the user fees. I am simply quoting from your own document. I would ask him to withdraw that.

Mr Clement: Mr Chairman, I understand his point. I understand why you're upset. I understand that you tried to get a clarification from the Honourable Mr Leach regarding that point, and you got that clarification and I read it into the record. That was the point I was trying to make.

Mr Phillips: So have you now said the compendium was wrong when you set that out?

Mr Clement: I'm quoting Mr Leach, who was before this committee.

Mr Phillips: No wonder we don't trust you.

Mr Clement: I'm sorry you feel that way, and I'm sorry if I'm offending the other side. That really is not my intention. But I listened to them for 10 minutes talk about what an evil empire of a government we are, and I wanted to set the record straight from our point of view that we are not being misleading. There is a lot of myth-making going on about what this bill is about. From our perspective, the bill is about giving us the tools and giving the municipalities the tools to—

Mrs McLeod: Mr Chair, on a point of order: Your ruling, as I understood it, was that the discussion of the motion should be relevant to the motion. The question here was not evil empires. The question was, will a person who is responsible for carriage of the bill appear before the committee?

The Chair: Mrs McLeod, I ruled once already that that is not a point of order. Mr Clement's comments basically relate to comments that had been made by other members. It's not a point of order, Mrs McLeod.

Mr Clement: In all honesty, Mrs McLeod, I'm responding to your motion and the way you presented it; that's all I'm doing. You're the one who was talking about how we don't have an agenda other than the way you characterized it, and I just want to correct the record.

Perhaps I should finish up my remarks, Mr Chairman. Obviously, I've hit some raw nerves, and I apologize for that, but I did want to set the record straight from our perspective.

Getting back to the main motion, we have confidence in the structure of these committee hearings, we have confidence that the parliamentary assistants who have carriage of this bill this week will be able to put forward the government's position. We'd like to get on to the amendments so we can discuss them—in full view of the time, which is ticking away—so we can fulfil our responsibilities to the people of Ontario.

Mrs Caplan: I want to begin my remarks by asking that Mr Clement correct the record. I never said he was a jackboot Nazi, I never said he was a fascist, nor did I suggest that he was part of an evil empire. I did say he was misrepresenting this bill; I said that he was not telling the truth; I said that he was not categorizing it correctly; I said that he had lied to the people and I did call him a liar, but I did not use the words that he said I

used and I think it's very important that this be on the record and corrected.

I don't take back any of the words that I actually used, because that is what he has done consistently at these hearings and that's why we need to have the Premier here. We need to know if the Premier knows and approves of what has happened at these hearings. We need to know whether Mr Harris knows that this bill removes all of the due process or most of the due process and natural justice that was put in place by Premier Robarts following the McRuer commission reports. Rights of appeal, rights for hearings, due process, access to the courts—this bill removes that. Those democratic provisions that were put in place by a previous Conservative government are gone. I want to know whether Mr Harris understands that that is in this bill.

We have not had a minister of the crown willing to come here and answer those questions. Those ministers are accountable to the Premier; he appoints them. If he doesn't think they are doing a good job, he can fire them. I think what you have done to the parliamentary assistants is tremendously unfair, Mr Harris, and to the members of this committee, including Mr Clement. The parliamentary assistants have been given a mantra, which is one response. It's not an answer; it is a response that is repeated over and over again until they start to look foolish. It is clear that the parliamentary assistants do not understand substantially what this bill can do and they cannot defend the decisions that the ministers have made.

Let me tell you something. It is the ministers who get the approval of cabinet; hopefully they have that approval. They must have the approval of the Premier for the policy and they must defend the policy decisions they have made and the implications of those policy decisions, and we haven't had a policy debate or discussion. We have parliamentary assistants here who are ill prepared to tell us what was in the ministers' minds when they made the decisions affecting substantive policy. They were not at the cabinet table when this was approved, and it is unfair to put them in that position of looking foolish because they simply were not there when the decision was made, they cannot defend the ministers and the ministers have refused to come here. I want to know if the Premier knows these things.

I'm not talking minute detail of the bill; I'm talking broad policy considerations such as the policies and issues Mr Phillips has raised on the ability to levy new taxes and fees and licences and all of those things that Mr Harris, the self-styled Taxfighter, said he didn't support. I want to know if he realizes this bill does that.

On the health side, Jim Wilson stood in the House and said to the people of Ontario: "Don't worry. This bill doesn't have any impact on access to your records or will affect personal privacy." The commissioner of privacy said, "Oh, yes it does." The commissioner of privacy confirmed my worst fears and my concerns when Mr Wilson had the nerve to say to me: "Stop pestering the commissioner. You're just pestering him." I want to know if Mr Harris says that's okay for a minister to do: Stand in the House and say, "Don't worry"; then when he's told, "You're wrong; you're dead wrong," the Premier says, "He'll fix that."

We haven't heard anything from the Premier about whether or not he thinks it's okay to remove all of the natural justice provisions that are removed from this bill. We want to know from the Premier if he thinks it's okay for government to go back and say to a court decision, "It is of no effect."

What that means is that any citizens who sue the government because they think they've been dealt with unfairly stand the risk, if this precedent passes, of then having the government come in with a law and say, "You went to court, you made your case, you said, 'The government treated me unfairly,' you got an award from the court," and the government tables a bill that says that court case is deemed to have no effect and the government doesn't have to treat you fairly.

1050

Does Mr Harris think that this broad policy implication in Bill 26 is okay? Does he even know about that? Does he know that every presenter—with the exception of one who does not represent mainstream hospital administrators in the Ontario Hospital Association—every other one, every presenter from the hospital sector, from the district health councils, individual representatives, doctors and nurses and everyone else, has said the commission should not have actual powers delegated to it? They said: "We support a commission. We think that it should be able to implement, we think it should be able to facilitate, but we think the minister should make those decisions."

Does the Premier think that after this committee has heard that over and over again, the minister should be able to bring in an amendment that allows him not only to delegate powers under the Public Hospitals Act, but powers under the Independent Health Facilities Act, the Health Insurance Act, the Mental Health Act? And you know something? I'm not even certain that you couldn't delegate powers from any act across government, because of course there are going to be labour adjustment policies that are going to be required. None of that is in this bill. So the potential for the delegation of powers to this commission is enormous.

Does the Premier think that it's okay for the Minister of Health to be able to delegate ministerial powers to an individual—unaccountable, unelected—to be able to go into a community without any assurance of due process? There's no defined role for the district health councils. I'll agree that Mr Clement and the others have rightly said that the section that says the DHCs are advisory to the minister remains, but there's nothing in this legislation that requires them to be involved at all. Because the minister says, "Oh, they'll be involved," that is no assurance in this legislation that this will happen, because he can delegate his authority to any commissioner, who can override what the DHC has said, who doesn't even have to hold a public hearing, who doesn't have to have an implementation plan.

In fact, we don't even know what the mandate is. We don't know what the mandate of the commission is. We don't know what the intention of this policy is except that it's a tool. In the name of restructuring and tools, this commission and an individual commissioner can do anything unrestricted. Does the Premier of this province think that's okay and that's good policy and that's good

law? Does he think it's okay for the government to get to coerce medical practitioners, to tell them where they can practise, under what conditions they can practise? Does he think the Minister of Health, without any consultation with anyone, including the public or the College of Physicians and Surgeons of Ontario or anyone, should be able to determine what they're going to pay for, what they're not going to pay for, what price they're going to set? Does the Premier think that's okay? Is that good policy? Is that the way he wants to run his government?

Does the Premier of this province think that it is okay for the cabinet to determine what is medically necessary? Does he think that the Ministry of Health—and it can under this bill—should be able to contract with a US managed-care company to come in and provide US-style managed care, centrally administered and centrally controlled in the province of Ontario? Is that the policy that Mike Harris thinks is okay? It is permitted in this bill. Does he know that?

I'm prepared to say I don't think he knows that and I want to be able to ask him those questions. If he says he doesn't know it, then it is the best argument for why this bill should not go forward on the 29th, next Monday. If he does know it, then we have an opportunity to finally understand what he wants to do in this bill.

The last thing I want to address as to why the Premier must be here, and yes, Mr Chairman, I got exercised when Mr Clement misrepresented what happened—from day one I asked, "Who is carrying this bill?" Do you know what I was told? "No one is carrying this bill. It is an omnibus bill. No one carries omnibus bills. No one is responsible." When I said, "For the different sections of the bill, can the parliamentary assistants take carriage of this bill, as is tradition when it comes to policy?" the answer was: "No. If you have any questions, place them on the record and they'll be answered in writing."

I've asked dozens of questions. I still don't have the answers. Some have been answered, but not all. The answers provoke an additional question. We have not had the opportunity to have our questions answered. We have not had the opportunity to question anyone who has carriage or responsibility of this bill until this week. This week there was a whole kerfuffle at the thought that parliamentary assistants should lay out broad policy direction and then answer, at the beginning of the discussion, just a few questions. That threw the government into an absolute tizzy.

I want to know from the Premier, is that the way he thinks this bill should be taken through the Legislature? No one has carriage. No one is prepared to speak to the bill. No one's prepared to talk about the broad policy implications. Parliamentary assistants are put in an awkward position and given a mantra to just repeat over and over again until they look silly. I mean, at times I feel very badly, not only for Mrs Johns but for the other parliamentary assistants who have been put in the position of having to defend the indefensible and who have been unable, by virtue of their position, to answer the questions. They never made the decision. How can they defend a decision that they were not part of? They weren't at the cabinet table when the debate occurred. How can they be asked to defend those decisions?

The Premier should be here because no one has had carriage of this bill, no one has discussed the broad policy implications of this bill, no one has given us the vision of where this is going to take us and no one has confirmed the policy implications that are possible. No one can do that except for the leader of this government because this, we are told, is going to implement his policy, the Common Sense Revolution document. We've been told that this is the cornerstone of his government's legislative agenda.

We also know, and I was at the meeting when Mr Eves informed the House leaders, that this bill would be passed before Christmas without any public hearings. That was the original intent of the government. This bill was so perfect and it was so important to the government that they were prepared to see it passed before Christmas with no public input. That meant no time for even one amendment, no time for anyone to be heard on this. That was position number one of this government.

If you check Hansard, because I see Mr Clement shaking his head, I will say to him that immediately following that meeting I went into the House, and on the record in Hansard I stated my concern about that intention. I tell Mr Clement—I always tell the truth—I was at the meeting. Mr Cooke said it yesterday. We were there, and in front of witnesses Mr Eves said that it was his intention to have this bill without any public hearings. Don't shake your head no. You may not like it. You weren't there, but that's the truth. Frances was there, Dave Cooke was there, Jim Bradley was there, I was there, staff was there and that's what he said. We were there; you were not. He said that was his intention, and we immediately alerted the Legislature to our concern. I stood in the House and said: "We're prepared to stay here and debate this bill and give it proper public scrutiny. Democracy requires that we have public hearings on major, important government bills."

I want to hear the Premier on that. You know, we've heard a whole lot of excuses for how the bill was tabled and all that, and frankly I had some concerns about the haste this bill was put together with. I think that the Premier could, at this point in the public hearings, I would say, not only answer the concerns that I have, but perhaps by his coming here and giving that kind of a reasonable explanation, help us and help the people of this province understand what this is really all about and what the government's intention is.

1100

From the beginning, we made the very reasonable suggestion that the bill could be split: Take out the parts that were really significant, identify those that the government had to have quickly. Those could be dealt with. The rest, that have these kinds of broad public policy implications that people are just beginning to really understand and that—we are daily finding new things to be concerned about, as in the issue of tolls yesterday. And the thing is, people say, "Oh, they can't do that." The truth is, they can. The technology is there.

We need to hear from the Premier if this is acceptable to him, if he knows what the bill contains, or if, as the rumours say, this bill was put together by bureaucrats who were told: "Government needs the tools. Come in

with a bill that will give us the tools and let us get on with it." In that process, that hasty process, of talking about tools, these powers are so broad-sweeping and have such enormous implications, they affect everything from rights, natural justice, every aspect of life in Ontario: taxation, environmental protection. I think the Premier has to come in and tell us if he knows the implications of this bill and if in fact this is his vision for Ontario. This is a reasonable motion; this is just saying, "Let's request." The Premier can turn us down, but let's request that he come and help this committee that is struggling with this bill because of its enormous impact on the province of Ontario.

Mr Tony Silipo (Dovercourt): I'm going to resist the temptation to redebate every section of the bill under this motion, but let me just say a couple of things. In fairness to the government members, I will make one comment about a couple of other comments specifically on the motion.

I think we've heard a lot of discussion in this motion and in other motions about the question of carriage of the bill. I do want to be clear, and Mr Sampson, I think, is going to appreciate this, as will Mr Hardeman, that on our half of the committee, while the two of them never formally said they were carrying the bill, I think it's fair to say they acted as if they were carrying the bill, and whenever I had questions or any other colleagues on the opposition side, they never hesitated to answer them. So I wanted to make that clear.

Mr Phillips: That's enough, Tony. Get on to the rest.

Mr Silipo: No, no, but the interesting point is that I know that Mr Sampson would have wanted to put that on the record, but given that Mr Clement is the government whip, is running the show with an iron fist, he wasn't allowed to.

Mr Rob Sampson (Mississauga West): I've been muzzled again.

Mr Silipo: I want to correct that for him. I find it interesting, since that was so possible on our half of the committee, that the other half of the committee dealing with health issues seemed to have such a difficult time with the question of who was carrying the bill.

But the essential and really important point that I think this motion for me addresses is really that one of the things that has been really striking throughout this whole process, above everything else or beyond everything else or in addition to everything else, really has been the enormous contradictions in which the government members have found themselves.

If we have, as we had yesterday, the Premier of the province, the leader of the government, denying that a certain action can come about as a result of this bill, saying, "No, it's not possible for firefighter charges to be applied as a result of this legislation"—"That's news to me" was basically his attitude—then I think it calls into question fundamentally the very essence of this bill. Because if the leader of the government is contradicting or showing that he doesn't know one significant aspect of the bill, then I think all the questions that people have raised about, "Does he know about the other parts of the bill?" are very legitimate questions.

Even at the very best, if one can say that he just simply didn't know, that in and of itself is quite scary, because it says to us that there may be many other sections of this bill that the Premier, as the leader of the government, on what is clearly their most important piece of legislation to date, is unaware of the impact of this legislation. If he is aware, he's giving us a different answer in public than his own government representatives are giving us here in this committee.

That, I think, is really the underlying problem that we have, because one of the things we have seen time after time after time really has been the ongoing series of contradictions. We hear first from the Minister of Municipal Affairs, to give but one example, that this bill does not allow a variety of taxes to municipalities, but we then discover it does. Many municipal leaders point out to us that it does. A number of municipal lawyers point out to us that it does and, lo and behold, the minister himself comes to the realization that it does, and so has to backtrack, a major backtrack, and bring in amendments that clearly say certain taxes, those powers, will not be given to municipalities. That's just one example, and I'm not going to belabour the point by giving you a series of others, but we have seen that approach and we have seen that constant series of contradictions come through from government members. And to have the Premier now contradict his own members on the committee, contradict his own minister, contradict the parliamentary assistants, who now we hear are being given full carriage of this bill, well, I think that's just a bit too much.

If the government doesn't have the decency to send its ministers here, which I think on this, their most important piece of legislation to date, would have been the minimum they could have done, it leaves really no other alternative but for us to call upon the Premier. So we will support the motion from the Liberal caucus because that's really the only course left at this point.

The Chair: Any further discussion on Mrs McLeod's motion?

Mr Phillips: Recorded vote.

Ayes

Caplan, Lankin, McLeod, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The motion is defeated.

Mrs McLeod: I have a second motion to place, and I place this motion given the defeat of the previous one.

I move that Tom Long, Leslie Noble, and Guy Giorno be requested to appear before the standing committee on general government—

Mr Phillips: Author, author.

Mrs McLeod: —on January 24, 1996, January 25, 1996, or January 26, 1996, to answer questions regarding Bill 26, the Savings and Restructuring Act, which forms the government's major legislative agenda.

Mr Chair, I do not place this motion lightly and I want to make it very clear—my colleague earlier said that this whole bill has become comedy hour. It would indeed be

a complete farce if it weren't for the fact that this bill involves huge and significant changes that will affect the lives of every citizen in this province. That's why I don't place this motion lightly.

I don't know whether or not the individuals named in this motion are the right individuals to name, and I would be absolutely delighted if whoever wrote this bill and knows what's in the bill would step forward to answer our questions about what the bill is and what it's intended to do and how it will be implemented and what its impact will be. I'd be delighted to have those people come forward, but we have been unable through three weeks of hearings, and now in the amendment process, to get anybody to come forward. Apparently now even the Premier can't be asked to come forward. We can't find anybody who is prepared to actually appear before this committee who is responsible for presenting the bill in the first place, let alone anybody who will have responsibility for implementing it once it becomes law.

We have tabled questions, as my colleague Mrs Caplan has indicated, because we were told that was the route to go to get answers, and there are outstanding questions to which we have not had answers from the Ministry of Health or other ministries we've tabled questions with.

As Mr Silipo has said, we have had continued contradictions. Mr Chairman, I submit to you that this is a serious concern as we approach the point at which debate even on amendments will be over and we will be forced into a position of having to vote on this bill. The contradictions that we have consistently found between what is in the bill, what is in the compendium to the bill, what is the ministers' statements outside of this committee about what the bill means and what they understand it to mean, contradictions with press releases that have come out accompanying the amendments, contradictions with statements that have been made by members of the committee representing the government—these contradictions have made it impossible for us to know and for the public to know exactly what is in this bill and what it will mean.

1110

I suggest to Mr Clement that that is not the result of opposition myth-making; it is the result of continued contradictions in a bill which is from the very outset complex and confusing.

Mr Chairman, I place this motion, again, and I don't place it lightly, because of our frustration that we can't seem to find anybody who actually knows. As you know, Mr Chairman, as this committee has gone and its subcommittee has gone across the province, every day we find something new about this bill. Even yesterday there was something new that was learned about this bill that even the Minister of Municipal Affairs and Housing was not apparently aware of, and we're not sure the ministry was aware of, in the ability of municipalities to place tolls.

So I place this motion simply because I'm hoping that perhaps somebody who knows what is in this bill will come forward and answer questions directly for members of this committee and therefore to the public.

Mr Alvin Curling (Scarborough North): I would be happy to participate in this motion as it's put forward by Mrs McLeod.

The frustration that is being shown by the committee members and people in this province at the Scarlet Pimpernel role that the ministers are playing—we can't find them anywhere. We seek them all over the place. They were so visible in the election, and when they bring this major piece of legislation before us to be debated, we thought then that somehow somebody would take some responsibility.

Mr Chairman, sometimes I've seen some frustration in your face when you see that neither of the ministers appear before this committee to be accountable, to defend, to support, to explain this legislation, and I understand why they don't come to explain. The demonstration of the Minister of Municipal Affairs having no understanding at all of the legislation, if I were in his position, there are two things I would do. I would step down from that position, seeing that the incompetence was showing up so much, and maybe try another portfolio. And because this is so important, they refuse to appear.

I think too that when they appointed parliamentary assistants, in our attempts over the time for them to explain this legislation, they failed miserably. As a matter of fact, I wouldn't go so far as to say they failed; there were no attempts at all. As a matter of fact, they refused to even answer questions in that regard.

We took it that they had some instructions, maybe from higher-ups, maybe from the Premier, where we don't see him, maybe from Mr Eves, since the bill is in his name, and maybe from the whip himself, who seemed to have taken on all the answers at one stage. And when he found out that he himself was defending something that was not defensible, none of the parliamentary assistants, with that high-paying amount of extra money they get to justify their existence, could do so.

So maybe we should attempt to get the other gurus, the Tom Longs and the Leslie Nobles and the Guy Giornos or whatever his name is, if I could be able to pronounce it properly—

Mr Silipo: Giorno. It means day.

Mr Phillips: It's in here somewhere.

Mr Curling: We hope that at least we'll get some answers out of them. I think they could give us some answers too, because I am quite sure that they are behind this legislation that they want to be passed.

We saw it coming for a long time, the way this bill was introduced, the manner in which it was introduced, the ramming through, the unparliamentary, undemocratic way in which it has been done, and if you feel that this is not so and that the people are not upset about this, just last night my colleague and I were at a meeting. We had about 300 people there. They came concerned about housing, and you know that 50% of the time, they were asking questions about Bill 26. They were upset about the process, the democratic process. They wanted to know if their lives will be changed dramatically, negatively, on this bill and what they could do. We asked them, of course, and we say to people out there, "You call your members of Parliament and you call the provincial members of Parliament." I even insisted they should call all the mayors around, because of all this wonderful power, this new power, that is going to be given to these

mayors. They were rubbing their hands. Hazel McCallion came in here rubbing her hands, and Mel Lastman was so happy to get some of those powers to levy some taxes on those people, the same taxpayers this Premier complained about. There's only one taxpayer. Then what he has done is pass it on to someone else to give some tax.

My colleague, I heard, eloquently, efficiently, spoke about the fact that they are taxes that could be charged on the highways which the minister denied, said he would resign if all these things would come about. He said it wasn't in the bill. Then he had an amendment to something that wasn't in the bill, which we said we know, we saw it in the bill.

So we want some explanation. We will do anything. We will try to get any of these gurus who come in to find out if they can explain what this law is about. What we're trying to do, Mr Chairman, and you appreciate this very much, is to bring back some democracy into this whole play, so that the people believe that they have a part in this in a way that this law that affects them can be explained to them; just explained to them. They may not agree with it, but they want an explanation.

We can't get this out of this government. It's shameful. It's very shameful. People are calling names of the government. They said, "Is this fascism?" And my colleague said, "Listen, there are many names that are called to the type of way these people are behaving." We just feel it's very undemocratic and something must be done. We will do anything to bring—and when I say "anything," we will try in even these motions to say to the people, "You have an opportunity now to tell your Premier, the Premier of this province, to send someone to explain this law."

I'm telling you, on the 29th you will ram this thing through, you will not listen to our amendments. We are trying our best to make something bad even look a little better. You will not listen to the amendments. You don't want to listen to the amendments. And the people should understand that when the time cometh, when the time runs out on Friday, you will not be able to do the massive amount of amendments when you, Mr Chairman, will consider this as being read. The people should understand what it meant is that we will ignore everything else that the opposition has put forward and ram through the amendments that you have, as taking it as the gospel, as the law. That's bad. That's awful.

The people are asking what they can do, what we can do. And we're doing our best from this side. I'm telling the people to do your best from your side. Call the mayors, call the Premier, call even the chairman here. His name is on there, Jack Carroll. Call him. Call anyone. See if something could happen. Because, Mr Chairman, you have been at every hearing and you can't deny the fact about democracy and the process. Respond to them and don't dodge behind the title. These parliamentary assistants who are getting all this pay dodge behind that. Call Tom Long. Call anyone to see if they will listen and to see if they will explain. So I'm in strong support of bringing forward those individuals to explain, even those. We will talk to clerks. We will talk to machines. Bring something to explain it.

With that, Mr Chair, I rest my case today, just so far. I will be back here every day if I can to see if I can get

some sense—I wouldn't even say common sense, because they've put a new definition to that word now—to put some sense into this government.

The Chair: Thank you, Mr Curling. Mr Clement, followed by Ms Lankin.

Ms Lankin: Don't provoke me, Tony. I actually was going to be very short.

Mr Clement: Okay, I'll try to live up to that. In ancient Roman times, there was, when they had—

Interjection: When they had emperors.

Mr Clement: Perhaps it was in the republic as well, not just the empire, but they had a form of entertainment where Christians and lions would be in the amphitheatre and they would battle it out. I think we have disagreements in modern times, in the context of this hearing, as to who represents the Christians and who represent the lions. But the fact of the matter is we have viewers at home who read the papers of the fourth estate who are here and want to look at our process and they want to see debate of the bill. That's the price of admission in terms of watching the TV or reading the newspaper; they want to see debate of the bill, just like the ancient Romans when they went into the amphitheatre wanted to see the Christians and the lions debating in the form that they debated in those days.

The fact of the matter is, the opposition has every right to present this motion. The opposition certainly has that right under our democratic process. I would draw the attention of the mover—actually, thumbs down meant that you stayed on Earth rather than going to heaven. It's a very picky point, but the point that I'd like to make is that Mr Curling is quite right, that people want to debate the substance of this bill. That's why we are here representing the people of Ontario. We have waited 12 hours of committee time, Mr Chairman, just to get to schedule A. That's how long it took us to get to schedule A.

You have every right to move any motion at any time. I do not deny you that right, but I simply plead with you, for the viewers who are waiting for the Christians and lions to get back at it, to debate please the substance of the bill so that, according to Mr Curling, we can get to the end of schedule Q, because we have spent one hour, and almost a half an hour on top of that one hour, an hour and a half, debating the motions, which is your right, to move any motion you want, but I think that people want to see the substance of this bill. It is a disservice to the public to continue without having the substance of the bill debated.

The persons mentioned in the motion, two out of the three of them are private citizens who are not in the employ of the provincial government or the Premier's office. Quite frankly, as I've said before, we have acknowledged that the parliamentary assistants are here to debate the bill and I would just as soon cede the floor to Ms Johns so that we can get on to the next amendment. So I will vote against this motion.

Ms Lankin: That's certainly an amazing analogy. I'm in awe of Mr Clement and his Christians and lions and his story of gladiators and empires and emperors who give the thumbs up or give the thumbs down. I guess we're just saying we'd like to see the emperor here.

Basically, the reason these motions are continuing to be put forward is because quite frankly the government continues to contradict itself day in and day out with respect to what's in this bill and what the implications of this bill are. Parliamentary assistants either don't have full answers or they give partial answers or they give an answer which then a minister of the crown contradicts the next day or the chief minister, the Premier, in fact contradicts, so it is reasonable for us to say, "Who knows what's in this bill, and let's get those people there."

I think I must be prescient, because I mentioned earlier about calling Tom Long here. I didn't know Mrs McLeod actually had a motion to that effect, but then I actually think she's prescient because the next motion we were going to move is, if there's anyone who wrote the bill and knows about the bill, would they come forward?

Everyone seems to be ducking this process. Minister Wilson, for example, won't come forward and defend the health sections and won't explain the amendments to us. Quite frankly, I read in the paper today with interest that he had a meeting set up with a group of people from the public and public meetings.

Mr Phillips: The public found out about it.

Ms Lankin: Someone sent the public notice to Ellie Teshler, who printed it in her column, because she's been following these hearings, as you know. Lo and behold, when he thought the public might actually show up at the public meeting, he cancelled the meeting. Where is the minister?

We continue to ask questions about this and let me say, perhaps with a little jest, in our caucus room when we talk about it, it's, "Where is Waldo?" But I actually think that the question has changed, because now we can't figure out who knows anything about the bill. Perhaps the appropriate question is, "Who is Waldo?" Who is it who wrote this bill? Who is it who can explain it and would you please bring that person forward, because, boy, we've got a lot of questions that we'd like some answers to. Thank you very much.

Mrs McLeod: I'll be very brief. I just want to say that I do think that debate is important and I think it's an important part of the democratic process, but I think on this bill the public's looking for answers and that's why I posed the motion.

Ayes

Caplan, Lankin, McLeod, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The motion is defeated.

As per our instructions, we will now have a 15-minute recess.

The committee recessed from 1125 to 1143.

The Chair: Welcome back. Just a little housekeeping while you were away. The New Democrats have replaced a motion of theirs, page 18, with a new page 18, so you can make that change in your book. Destroy the old one and substitute the new one.

Mrs Caplan: We're past that already.

The Chair: But that's back in section E that we stood down.

The NDP has also replaced page 25 is replaced with a new page 25, of which you have a copy. The government has put forward a new page 162, so you can replace the old 162.

Mrs Caplan: While the committee was in recess, I received a fax that I'm assuming is from a constituent, although it's not someone I have ever met, who is watching the proceedings. I was asked if I would deliver this message to Mr Clement. It says:

"Mr Clement: As a member of the viewing public to which you just referred, please be advised that honourable members opposite are not wasting my time by attempting to defend the democratic process heretofore lacking.

"Patricia Marson."

I'd like this placed on the record.

The Chair: The next order of business is a Liberal motion under subsection 8(7), page 24A.

Mrs Caplan: I move that subsections 8(7) and (8) of the Ministry of Health Act, as set out in section 1 of schedule F to the bill, be struck out and the following substituted:

"Duties

"(7) The function of the commission is to carry out and implement plans proposed by a district health council and approved by the minister to restructure hospitals or groups of hospitals in the jurisdiction of a council and to ensure the efficient delivery of an integrated health care system in the council's jurisdiction.

"Dissolution

"(8) The commission shall be dissolved three years after the Lieutenant Governor establishes it."

This motion does what the government has said it wants to do in terms of the duties of the commission. The restructuring commission, as proposed by the government, has no mandate enshrined in the legislation, has no duties or responsibilities set out in the legislation. We want to be clear that if you're going to go ahead with a commission, its function and its duties be clearly defined as to what that commission will be able to do.

We've set out duties in subsections (7) and (8), and subsection (8) says "three years." We think all the decisions and the implementation should have been set in process within the next three years and that is well within the government's mandate. We think that is more appropriate than the four years. However, I suggest that if the government is willing to accept the first part of the amendment, we would be willing, as a matter of being helpful, to live with the four years if they insist, although, from what we heard from the deputations and from what we know about time lines of government, we think three years is adequate time to put these plans in place.

We're very concerned about any minister having these absolute powers any longer than required for the planning to be completed and the implementation to be well under way. That's why we tried to shorten that. But if they will accept the first part, which defines the duties of a commission clearly so everyone understands what the duties are, and is also very clear that the duties and responsibilities relate to hospitals but also to an integrated health

care system—that has not been clear at all in this legislation and it's our hope that the government will support this amendment.

Mrs Helen Johns (Huron): I'd like to thank you for the motion. Basically, we as the government have decided we need four years to be able to implement the hospital restructuring, so from that standpoint we will not be supporting the motion.

The Ontario Hospital Association has sent out a release that says it is pleased that the amendments are very close to those the hospitals have been recommending to the minister and his staff and to the standing committee on general government, which is reviewing the bill.

We believe we need four years to be able to work through restructuring. That allows the next government to campaign on that aspect, if we need to have restructuring one more time; to go forward if we haven't completed all the restructuring that needs to be done.

Because you have talked about standing down subsection (8), I will talk about subsection (7) also. We believe that in most cases, what will happen is that the commission will hear from the district health council, they will hear the plans of the community, they will implement the plans of the community. The commission will carry that process through and will implement it. We believe that process will take approximately four years.

What we are concerned about in this motion is the area where a community doesn't have a district health council report, where they may have just a group of people who come together where it's not a district health council; or where there is some other reason to move forward on restructuring where there is no district health council report. This motion stops us from moving forward. We can only move forward with restructuring if we have that district health council report. We know that in some areas we will not be having a district health council report and we will have to lean on other factors in the community to decide what the best health care system is for Ontario. That's why I'm recommending that this motion not be supported.

1150

Ms Lankin: I'm disappointed. I can tell from your argument that you will also vote against my next proposed amendment. It's quite clear that you couldn't support mine, based on the arguments you've made, in spite of the fact that you may be getting some advice to take a look at it. That's disappointing, because I think there is room in the legislation to make reference to plans of district health councils.

I take issue with always being assured that you believe the commission will carry out its work in light of district health council reports but that you refuse to have anything written into the legislation that even builds a linkage between the two. I'm disappointed that you're going to vote against this, and because of the arguments you've made, it's very clear to me that you will not be able to support my motion that's coming up next.

Mrs Caplan: To be helpful to the parliamentary assistant, we would like to amend the motion to delete everything from "dissolution." That would take out any of the sunset timing, and hopefully the amendment would then be acceptable to the government. We will delete

everything following the word "dissolution," and that would just leave in place a definition of the duties of the commission, which certainly the parliamentary assistant and the minister can support.

Mrs Johns: Can I clarify that? Are you basically saying you'll take out subsection (8) and leave in (7)?

Mrs Caplan: Yes.

Mrs Johns: Maybe you missed part of my argument, so I'll just reiterate that.

Mr Phillips: If we take out (7) too, maybe they'll support it.

Mrs Caplan: I'd just make the point that (7) is enshrining in the legislation what you've been saying. There's nothing in (7) that's inconsistent with what you've been saying about the duties of the commission. It just makes it clear, and clarity is important; this legislation has no clarity. I've now amended this motion so that it will be acceptable to you.

Mrs Johns: I understand that. Ms Lankin says I did answer it, but I want to answer it again so you can hear it. For once, someone says I did it right—maybe not, just said it properly.

The intent of the commission: We believe that the commission will, in most circumstances, take the district health council report, implement it and move forward with the recommendations of the district health council report. There are some cases where there will not be a district health council report because there isn't a district health council process going on. For example, in my riding there's not a district health council process going on at this time. There may be places where there is not consensus on the district health council report. Recently, we received a recommendation from a district health council where we have a dissenting opinion from the DHC. We have problems with being able to move forward on just the issue of a district health council report being the start of the process for the commission.

Mrs Caplan: Now I'm very concerned, because what we've just heard from the parliamentary assistant is contrary to everything we have heard from the ministry and from the parliamentary assistant and from members of the government caucus to this point in time. It's exactly what our fear was. The fear was that there would be no process in place and that the minister could unilaterally and arbitrarily go in, without any process that involved the district health council, and make a decision. What I hear the parliamentary assistant just say has confirmed that.

Until this point in time, all we've heard about are the 60 reports that are out there. We've heard about the important role that the district health council has to play. Now, we're not arguing that there may not be a need for further debate and discussion on those DHC reports, but to have the parliamentary assistant tell us today—let me read you again what we're proposing:

"Duties

"(7) The function of the commission is to carry out and implement plans proposed by a district health council and approved by the minister."

So between the recommendation by the district health council there can be changes until the minister approves it, so there's your check and balance. It's not automati-

cally what the DHCs have to say. They advise the minister, he takes their plans, he makes whatever changes he wants and then he approves them. These are for the purpose of restructuring hospitals or groups of hospitals that are in the jurisdiction of that council, and the purpose is to ensure the efficient delivery of an integrated health care system in that council's jurisdiction.

Mr Chairman, I am alarmed that we now hear it is the minister's desire to have the powers to go in where no study has been determined and where there's been no participation by a district health council, where he can just walk in and unilaterally make a decision that's going to have dramatic implications on a community. He can do that with this legislation without so much as a public hearing and with no due process, and he doesn't have to involve a district health council and he doesn't have to establish a district health council. He doesn't even have to establish any kind of community process.

The concern we have is that he can delegate all of the powers he is granted here to a commission or to an individual commissioner to do all of those things that I have just said. All that this reasonable amendment does is to scope that a little bit to ensure that there is some process, and I don't understand why we at this late date are now hearing a different tune sung. It's not that you got it right; it's that we haven't been given the information from day one. This is new information. We were never told that that was the intent.

Mrs Johns: I just want to clarify, if I may. All we want to do is recognize that there may not be consensus within a district health council, and if there isn't consensus and we don't have a report from the district health council, the whole system can be held up for ransom because of the way this has been set up. What will happen is that we cannot proceed with restructuring if we don't have a report, so therefore the system will not be restructured.

Mrs Caplan: I would disagree completely with what I've just heard from the parliamentary assistant, because in fact this does not require a consensus. All this requires is a report from the district health council. The minister can then make whatever changes he wants because they're only advisory to him. All this does is ensure some process in the community. It does not demand consensus.

It says the minister can make the decision and then the commission implements the minister's decision. It also does not require that the district health council has to come in with a unanimous report. They can have a report from the district health council that lays out to the minister what the concerns are in the community and asks the minister to arbitrate, make the final decision.

So this is not something that's going to in any way fetter the minister or stop the minister from taking action. All this does is require community participation and ensure the involvement of district health councils.

Mrs Johns: I disagree with your interpretation of the legal ramifications of that, so I'd like to get Ms Czukar to comment on the legal ramifications, all that this does, so that we both understand.

Ms Gail Czukar: I think that the way the motion is written, it states that the function of the commission would be to carry out and implement plans proposed by

a district health council. So this would restrict the commission to that function alone and would require the minister to approve those plans. But if there is no plan, the commission essentially can't move forward, according to the wording of this motion. I think that some of the things that were said about the minister being able to write a plan that the commission could move forward with are not incorporated in the motion as it's written.

Mrs Caplan: Ms Czukar, the role of the district health councils is to do what? Legally, what can they do?

Ms Czukar: There are functions set out in section 8.1 of the Ministry of Health Act which refer to advising the minister, making plans with regard to the health within a geographic area and that sort of thing.

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Mrs Caplan: Do the district health councils—I know the answer to this; I just want to get it on the record—have any power to do anything other than recommend to the minister?

Ms Czukar: They have the power to make plans and advise the minister, but the way this motion is written, it requires that plans proposed by a district health council and approved by the minister be the ones that the functions of the commission are to carry out. If there is no plan, then the minister can't make a plan on his own under this section.

Mrs Caplan: That's exactly what we're trying to accomplish. We don't think the minister should be able to do a plan unilaterally on his own. We think there should be community process and participation and a plan developed by the community that the minister then has to approve. We are also aware that under the existing law without this amendment, the minister can unilaterally go into a community, whether or not there is a district health council, and do as he pleases. So, in fact this bill requires some process. I don't believe it fetters the minister; I still think that because DHCs are advisory to the minister, they don't have any statutory power to do anything except recommend. On that we can further debate. But I think you've said very clearly that this legislation would require community process.

Mrs Johns: I'm not disagreeing with community process. What I'm saying is, if there is no report from the district health council for any reason, it would hold the restructuring process up for ransom. We want to expedite, to move forward in hospital restructuring. We believe it's an important part of reforming health care in Ontario.

Mrs Caplan: Look, Mike Harris stood on a platform and said, "I have no plans to close hospitals." What he is now saying is, "Give my minister the authority to close hospitals without a community plan." That runs totally contrary to the promise that was made to the people of this province. I'm telling you this bill does not require any community process, and you have just confirmed that the reason you won't support this is that you want the minister to be able to go in and act unilaterally and develop his own plan.

Mrs Johns: I have confirmed that there are not just district health councils that are making plans about the restructuring in Ontario. There are local planning processes between hospitals and other agencies that are not directed by the district health council. These recommendations are local.

Mrs Caplan: The history of this province's—

The Chair: Excuse me, Mrs Caplan, I think we basically heard most of the arguments on this question. Is there any other discussion on this particular amendment?

Ayes

Caplan, Lankin, Phillips, Silipo.

Nays

Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment, as amended, is defeated.

The next one we will consider is a New Democratic amendment. Ms Lankin.

Mrs Johns: Can I just ask for this to be stood down? We just got it this morning and I'd like to have a look at it and talk about it with Ministry of Health officials.

Ms Lankin: Maybe you just got it this morning but it's exactly the same as the one we took out, except it makes it consistent with the motion you just passed setting out powers. This becomes sub 7(1). It just makes it consistent with the motion you passed. The content of it is exactly the same.

If I may, it's not read into the record yet, but we had functions set out in the old one and you've now put—

The Chair: Is that explanation satisfactory? Are you prepared to proceed, Mrs Johns, or do you still want unanimous consent to stand it down?

Mrs Johns: I'd like unanimous consent to stand it down.

The Chair: Everybody, unanimous consent to stand down this particular amendment? Agreed? Okay.

The next amendment is a government amendment, page 26.

Mrs Johns: I move that the French version of subsection 8(8) of the Ministry of Health Act, as set out in section 1 of schedule F to the bill, be amended by striking out “, auquel cas” in the seventh line and substituting “et, si le règlement le prévoit,”.

Pardon the French. To anybody who is French, I apologize.

The Chair: Is there any discussion on this particular amendment?

Mr Phillips: Why don't you give us a few of these to move just so we can have something to do.

Mrs Johns: That's a good idea.

The Chair: Shall the amendment carry? The amendment is carried.

The next amendment we will consider is one from the New Democrats, page 27. Ms Lankin.

Ms Lankin: This is schedule F to the bill, section 1, subsection 8(8) of the Ministry of Health Act.

I move that subsection 8(8) of the Ministry of Health Act, as set out in section 1 to schedule F of the bill, be amended by striking out “or that only specified members of the commission are to carry out that duty within a specified geographic area” in the fifth, sixth and seventh lines.

The Chair: Discussion?

Ms Lankin: Generally, I guess I would start by saying I'm a bit perplexed as to why the minister or the parlia-

mentary assistant believes this section is necessary. It would be helpful, when you are responding to my proposed amendment, if you could give some rationale for the section, particularly given some of the regulatory powers that you've set out in the sections to follow in this particular act.

But I'm concerned about this section, just to explain it so you don't have to go back and take a look, allows where the commission has been set up, for duties to be assigned to individual members and for them to be carried out in specified regions of the province. I don't know if there's any other elaboration you would like to make to that, but it gives me the sense—you know how concerned we are about the powers and duties that you have given to the commission and that are being delegated from the minister—that this could be delegated to one person to carry out whatever those duties are going to be. We've not had—excuse me, Mr Clement—an adequate explanation from you, I would say, at this point in time as to what those duties are. They can be carried out by one person in a region or an area of the province, which can truly lead to a bizarre situation of an individual being able to override local planning processes.

I'm not sure (1) why you need that section of the act, and (2) what it is you want to accomplish. I think yesterday when we had this discussion in general around the commission it was drawn to people's attention that when you put all these sections together, you can have one person essentially walk in and take over all the decision-making with respect to the delivery of health care services in a region of the province.

Given that you won't let us define who's going to be on this commission and we don't have any assurances of what the membership and the makeup of the commission are going to be, giving these kinds of powers over a region is very worrisome, particularly to some of my colleagues who come from parts of the province where they have gone through local restructuring exercises and have a consensus they've arrived at, and find themselves unable to continue to implement that consensus because of the Ministry of Health, or in this case the minister, taking a different position than previous ministers had taken.

I've moved the amendment because I worry about those kinds of powers being carried out by a single individual in regions of the province. You might be able to allay my concerns with your explanation; I don't know. But I'm also not sure why you need that section of the act.

Mrs Caplan: Can I speak in support of the motion?

The Chair: There was a question asked of Mrs Johns, I believe, so we'll give her the opportunity to answer the question.

Mrs Johns: The intent of this section in the act was to say that the representation on the commission would not be all centralized, if you will, that there would be people from different areas who would bring a broad perspective to the commission. So, for example, my feel was that with eight to 10 members of the commission we may well have one with a rural perspective and one with a northern perspective. I was quite surprised by your

amendment also when I saw it, because I was unsure where you were coming from.

We were saying that of the members on the board, there would be some who would be chosen for different reasons, maybe because of district health council experience, maybe because of their ability to work on amalgamations, and people with geographic differences too, to be able to bring a wide perspective to this commission about what the needs are in Ontario.

I want to make sure I say this: We're still going to use the local planning and we're going to be saying, "Hey, if you have a solution that's working in your community and it's proceeding forward, we're not stepping in to do something about that." What we want to do, though, is have a broad base of interest on this commission, because we believe it's important. It's not only interest by profession, but it's by geographic area also.

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Ms Lankin: I appreciate you explaining what it is you want to do by this section. May I read the section to you? "Where a regulation is made assigning a duty to the commission, the Lieutenant Governor in Council may provide that only specified members of the commission are to carry out that duty or that only specified members of the commission are to carry out that duty within a specified geographic area, and where the regulation so provides, any action or decision of those members shall be deemed to be an action or decision of the commission."

With all due respect, Ms Johns, it says nothing about the makeup of the committee. You missed your chance on that when you voted against my amendment yesterday, which talked about the commission having to reflect the diversity of the population of Ontario, which in fact was your opportunity to ensure that you had geographic, regional and other issues of concern in terms of diversity reflected on the commission.

This section of the bill has nothing to do with the makeup of the commission and your answer to me only spoke to the makeup of the commission. So I suspect if that's what you're trying to accomplish, that you've written it incorrectly, unless you're trying to accomplish something different. So maybe I'll ask you to give me one more answer in terms of what this section is supposed to be doing.

Mrs Johns: I'll add something else to it, if you'd like me to.

Ms Lankin: Do you still stand and say that this section is to ensure that there is geographic representation on the commission? That's what you told me it's for.

Mrs Johns: We need to add people to the commission or designate members of the commission who can provide a local or a regional perspective, one way to help achieve the goals that you've been trying to put forward so far.

Ms Lankin: So this section allows you to add someone to the commission? Is that what you're saying?

Mrs Johns: Add people to the commission who have a specific—

Ms Lankin: Let me read it to you again: "Where a regulation is made assigning a duty to the commission, the Lieutenant governor in Council may provide that only

specified members of the commission are to carry out that duty or that only specified members of the commission are to carry out that duty within a specified geographic area, and where the regulation so provides, any action or decision of those members shall be deemed to be an action or decision of the commission." It doesn't say anywhere that you can add a member to the commission. So let's give it a third try to answer what is your intent with this section.

Mrs Caplan: Just to be helpful—

The Chair: Mrs Caplan, we're having an exchange here between Ms Lankin and Mrs Johns.

Mrs Johns: Ms Czukar would like to answer that for you.

Ms Lankin: Ms Johns, my point here—quite frankly, I understand what this is; I understand. These are very clear words. I understand. My point is that we are here in a system where we have someone presenting and carrying the bill and explaining amendments to us—and I am sorry and I apologize; with all due respect, the minister should be here because the minister is the person who should be accountable for this. The minister shouldn't put someone forward who wasn't involved in the development or the rationale behind this. It's not fair to other individuals and it's not fair to us as committee members.

Let me tell you what this section does. You have a commission that you appoint. Under this section, you can give certain of the powers that you've just passed in your amendment to any individual, and an individual can carry them out.

Mrs Johns: On a regional basis.

Ms Lankin: Not only on a regional basis. Again, look at it, Ms Johns. I'm sorry, you're wrong. There are two sections contained within there; there are two powers. Any individual can carry out the powers of the commission as they are assigned, or any individual can carry out the powers of the commission on a geographic basis. So there are two sections; there's not just one.

Quite frankly, we are worried about having the opportunity or the situation where one individual is given all of the powers of the minister of the crown to go into one specific geographic region, can override what local planning processes and local individuals have said. I think this is badly constructed. I think it's pretty clear that it has at least not been well presented and explained to us. I would suggest that my amendment is helpful in the sense of not having one, single arbiter walk in and make decisions in communities, overriding community consultation and community consensus.

The Chair: Mrs Johns, did you have any further comment on that? No. Mrs Caplan.

Mrs Caplan: I'd like to be helpful, if I can, because my reading of this part of the bill is not as you've described it, Ms Johns. In fact, this is where the minister has the power to designate any one member of that commission to act as an independent commissioner. As we've discussed before, that is a provision of this bill, and I believe this is the section that gives effect to that.

It says that the minister could appoint somebody from Toronto to go into Huron and make a decision, because that would be within the geographic region, and that they could do that without a district health council report,

without any community process, without any community input. That's exactly what this legislation says—any individual member of that commission can be given all the powers of the minister and all the powers of the commission and be appointed to a geographic area—but it also says that it doesn't have to be geographically specific.

The concern I have with the amendment that's been placed is that, frankly, I don't think that any individual should be able to be given all of the powers of the minister, even if it is confined to a geographic area, because if you want to start a war in a community, just try and send someone into that community to dictate to them what's going to happen in their community. And this does not require that the individual come from that region. This has nothing to do with the makeup of your commission. It doesn't say that people have to come from different geographic regions. It doesn't do that, and I'm going to read it to you again so that you can understand it as I understand it.

It says that "the Lieutenant Governor in Council"—that's the cabinet—"may provide"—the cabinet can decide—"that only specified members of the commission are to carry out that duty"—as set by regulation at some point behind closed doors about what the responsibility of the commission is going to be and—"that only specified members of the commission are to carry out that duty or"—and that was an "or" by the way, not an "and"—that those "specified members of the commission are to carry out that duty within a...geographic area." Then it goes on to say that "any action or decision of those members shall be deemed to be an action or decision" of the whole commission.

What this says to me, on my reading of the legislation of your law, is that the minister will be able to decide—it'll be an order in council cabinet decision, but it'll be on the advice of the Minister of Health—which individual of the commission will be able to go into a community and tell them what they have to do. That's what this says.

This does not require that they come from that area. It doesn't say what their credentials have to be. It doesn't require any due process. This is about giving any individual member of the commission, to be selected by the minister, all the powers of the commission, and when they make a decision, there's no appeal. There's no appeal to the courts, there's no appeal to the minister, because the decisions of those members who've been given this extraordinary power to dictate to communities what's going to happen in their community "shall be deemed to be an action or decision of the commission."

And the commission's decision is not appealable, and there's no due process following a decision by the commission, and there's no access to the courts. That's what this says. This isn't about where people on the commission come from, Mrs Johns. That's why we need the minister here. This is a very frightening clause. This is the clause that lets the minister decide who's going to walk in and tell communities what's going to happen and the communities have no right of appeal. That's what this is about.

Frankly, with due respect to Mrs Lankin, I don't think your amendment solves the problem.

Mrs Ecker: I think Mrs Johns has been quite clear about the intent of why the restructuring commission is needed. The minister has been very clear that local planning groups, whether it's district health councils, which are usually the groups that are making local planning recommendations to the ministry—that that process is important, that process will be there and that process will be the process we will be using to restructure, as much as possible. If there's a district health council process there to restructure, those are the recommendations that the ministry would like to be able to consider and to implement.

Mrs Caplan: She didn't say that.

Mrs Ecker: Yes, and that's what the commission is all about.

Mrs Caplan: That's not what she just said.

The Chair: Mrs Caplan.

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Mrs Ecker: Thank you, Mr Chair. There are many areas where that local planning process has been working very well. We've also heard there are areas where that local planning process had difficulties and problems and where they thought they needed some assistance from the Ministry of Health.

The opposition has complained that they believe Bill 26 gives the minister all these powers that he shouldn't have, yet Bill 26 is clearly saying there will be a commission to remove any attempt to make allegations that somehow or other this is a politically driven process. You will have a commission of individuals who will be making decisions about the restructuring based on whatever and as much local input as they can have. I think that is very clear and very necessary in the system.

Mr David S. Cooke (Windsor-Riverside): I just have a question, if I might, of legal counsel from the ministry. I understand what Ms Ecker is saying and what the purpose is, but I want to know, in the proposed law, if the ministry wanted to, would it be able to send one commissioner in who does not come from the region to be the decision-maker for restructuring of health care in that particular community?

Ms Czukar: The answer to that is no, not without a regulation that's been passed which specifies what duties that particular commissioner has and with respect to what geographic area. The ministry can't do it unilaterally.

Mr Cooke: No, but—all right.

Ms Lankin: So the answer is yes.

Mr Cooke: The answer is yes.

Mrs Caplan: Can they write a regulation?

Ms Lankin: Come on, Gail.

Mr Silipo: The question is, can it be done with a regulation?

Mr Cooke: Under this framework law, it could be done by the government.

Ms Czukar: What this section says is that a regulation could be made that would allow certain members of the commission to carry out those powers in certain geographic areas.

Mr Cooke: So the answer then is that if the Minister of Health decided that he, in his wisdom, wanted to send one commissioner down to be the arbiter, say, in my home community of Windsor-Essex to restructure that

health care system, he could take somebody from Metropolitan Toronto and send that person down after the regulation had been passed and that person would basically be the health care czar for that area.

Ms Czukar: I don't think I can characterize it that way.

Mr Cooke: Well, it would be the commissioner who would be making the decisions, based on the regulation.

Ms Czukar: He or she would be carrying out whatever duties have been assigned by the regulation under this section.

Mr Cooke: The only point being that if in fact the purpose and the procedure is as Ms Ecker outlines it, then why wouldn't you be more specific in the legislation so that it would not allow, under any circumstances, a person who doesn't even come from the community to go down and be the single decision-maker on health care restructuring? Why wouldn't you say that in the law?

Mrs Caplan: Could I just restate Mr Cooke's question in a way that we could elicit a yes or a no answer from the counsel at the ministry? As I understand what you've just said, this is the process—and I won't use words like "czar." The minister could draft a regulation appointing any individual from any part of the province a member of the commission, assign them duties and responsibilities for any area of the province, whether they come from there or not, and they could receive all of those powers by regulation, go into that community and make a decision. Then in the next section of this bill, section 9, any decision that they make, if it's done in good faith, is not appealable.

Is that the regulatory authority that the minister would have under these sections? Is that a fair categorization of what this permits?

Ms Czukar: Yes, I think that probably describes it.

Mrs Caplan: Okay, that probably describes it. So for the members of the government caucus, let me tell you what that means. I want to be fair, so that we all understand that section 8 and 9 together would permit this. If I'm wrong, okay. It would permit the Minister of Health, by regulation, to appoint someone from Ottawa to go into Windsor to make a decision on what's going to happen in Windsor. The duties and authorities and powers would all be set out in regulation behind closed doors, the cabinet. They would decide; that's order in council. The decision that person would make, if it were made in good faith—so they'd have a little report that showed they acted in good faith—nobody could appeal that. That's what this does.

What this does is it says he could appoint a bureaucrat, he could appoint a civil servant to do this. There's no restriction on who the commissioners could be. It could be anybody. That's how I read this. Could that scenario occur, Ms Johns? Yes or no? I'm trying to be fair. I've debated something. Yes or no? I didn't hear you.

Mrs Johns: Yes, although my lawyer's saying it isn't a yes or no answer and I should probably hear the whole reason why it's not a yes or no answer. What we believe is—oh, I guess it's not my turn to speak.

Mrs Caplan: Sure, go ahead.

The Chair: Mrs Caplan asked you a question.

Mrs Johns: What we believe is happening is there are 60 studies coming in in the next two years and we know

that we have to work on those, implement them, expedite them along the process. All of the commission will not work on every study that comes in. We've agreed to that. We agreed yesterday that they will not work.

This commission or these people will be tied with duties and powers that will be set up by the cabinet so we will be able to say, "Implement a district health plan," and we'll be able to make the requirements that tell them what to do. They won't just be going out and saying, "Hey, I'm going to do this." They're settled by regulations. Their mandate is set up in regulations in the bill.

Mrs Caplan: If that answer was designed to give the people watching these hearings any comfort, let me tell you, you have now sent a very clear message of what your intention is. You can appoint anybody you choose, whether it's a bureaucrat in the ministry, well-meaning as they are—it could be anyone—to this commission. We don't know what the commission's going to look like. We don't know even what duties and powers you may or may not assign. We don't know what direction. Because that's all done behind closed doors in the cabinet.

You can appoint individuals, send them into a community, tell them to make a decision defined by the regulation. Do you think the communities are going to accept that as reasonable? Now that we understand—it's taken us all this time to understand that that is your intention—do you think the people think that's what this bill does? Do you think anybody understands that? A minute ago you were telling us that section 8 had to do with the composition of the commission.

Mrs Johns: I believe that people understand that hospital restructuring has to be done. They want it to be done. They want it to be done in the best way that it possibly can, so that they maintain their health services in the community.

Ms Lankin: What's that got to do with section 8?

The Chair: Ms Lankin—

Ms Lankin: Well, it's a legitimate question. What's that got to do with section 8?

The Chair: Mr Phillips is the next person to speak.

Mrs Johns: And this just expedites the process. That's all we're doing.

Mrs Caplan: "I have no plan to close hospitals," Mike Harris said. "Now we're expediting. We're sending one person in who will have absolute power and you can't take him to court. You can't appeal it."

Mr Cooke: Now do you agree it's a czarism?

Mrs Caplan: You know what? I can't think of a better word.

Mrs McLeod: It's imperial Rome heading for a republic.

Mrs Caplan: I don't know what you're going to call this person, this person filled with all power and wisdom to go into a community and dictate to them what's going to happen. And their words can't be appealed. That's it; it's done. You're not going to get away with this. Communities will not stand for this.

Mr Phillips: To the parliamentary assistant, just so I'm clear on this, and I run the risk of repeating what my colleagues have just said, but yesterday we heard that the commission has provided—the regulation covers this. But the commission has the authority to determine—you

mentioned hospitals, but it's well beyond hospitals. The commission has the authority to make a determination for a community on, we heard yesterday, nursing homes, home care, long-term care, hospital structuring, ambulance service, community health centres, independent health facilities. I gather the commission has the authority to restructure virtually all of those areas, provided the regulation gives them that authority. Have I interpreted that properly?

Mrs Johns: The commission, yes.

Mr Phillips: I'll use Windsor as an example.

Mr Cooke: Quit picking on us.

1230

Mr Phillips: All right. Scarborough or Kingston.

Mr Cooke: Liberals advocate Windsor be number one to be restructured.

Mr Phillips: Where's Sandra? That's right.

Just so I and we and the public are clear, this is not just about hospital restructuring. The second thing is that the cabinet some day will pass—and I gather you said there are 60 of these studies going on, so we just assume this will be a one-person, many one-persons commissions, because these eight or nine people are going to be extremely busy.

But at some stage a regulation goes to cabinet, is passed and the public finds out that there's a restructuring going on in Windsor through what we call the Gazette on Saturday. Am I right on the second point, that the cabinet, the Minister of Health, will direct through regulation this commission on their terms of reference for restructuring in Kingston?

Mrs Johns: Yes.

Mr Phillips: That's correct. And that regulation—maybe you can just describe what might be in the regulation. Here's what I think could be in the regulation. Tell me if I'm wrong. This instructs the commission to go, let's say, to Essex county, and to put forward a final plan for restructuring the hospitals, the ambulance service, and I assume—you're shaking your head, but yesterday you got the authority, through your amendment, to do that. You've always talked about community; you've said this is well beyond hospitals, so I assume that, if you are restructuring hospitals, it is your plan to be restructuring, for Essex county, the whole system.

The regulation might say, this authorizes you to go to Essex county, to restructure the health system there, including the determination of how many hospitals, how many long-term-care beds, how many community services are provided, how the ambulance structure should work with that and the community health services. That regulation would give them that direction and, once they've finalized their report, the report is final. No one else need approve it other than the commission, and I gather the commission's report is approved by the commission. Am I right there?

Mrs Johns: No, I wouldn't say that. What I would say is that the local community would come up with a plan of how the system should work, taking into effect all the needs they have in their health services. What they would then do is submit the plan, the plan would then be approved, and what would come about then would be the restructuring, with a focus on hospital restructuring.

But we have to maintain, we have to ensure that there's a continuum of care, so we can't leave holes in the system and we may have to look at other areas that would also be discussed by the local planning committee. The difference between what you said and what I've said is that I believe the local planning in the community will be the incentive to drive the process.

Mr Phillips: Yes, but—

Ms Lankin: That's what you refused to put into legislation.

Mr Phillips: Yes, just so the public is aware, there have been motions by the opposition proposed to implement what you said you were going to do. You've rejected those motions, and the reason you have rejected them, I can only conclude, is that you have no intention of holding the commission to implementing the local plan. You want the commission to do whatever you want the commission to do and you've told us you want that flexibility.

I think the public should recognize that you may or may not accept their recommendations. Frankly, the commission will do whatever you direct it to do. Why would you not, if you believe what you just said, have accepted the motion calling for the commission's role to be to implement a locally developed plan?

Mrs Johns: What I said when that motion was before us was that there are some communities which will have different visions within the community, not one plan from the district health council, maybe different views, and we have local planning that's not district health council planning. That's why we didn't accept the motion before.

We believe that local communities will have input into the hospital restructuring. We will set that up in the terms and conditions for the commission. But we believe we have to have flexibility in case there isn't a district health council report, that there is only a local plan or that there is only a group of people who come together to decide what's best in community health care.

Mr Phillips: I think you understand the scepticism we have, which is that we think you want the authority to do whatever you want to do. But perhaps you could help us here. Would you be prepared to entertain a motion that says that if there is a locally developed plan that has clearly been widely consulted on, if there is such a thing, you would then hold the commission responsible for implementing that? Are you prepared for that amendment?

Mrs Johns: I would suggest you submit it and we'll have a look at it.

Mr Phillips: But you've rejected everything else so far. Are you prepared to accept an amendment that embodies that?

Mrs Johns: I'd have to see it first.

Mr Phillips: Sure, yes. This is so phoney. Are you prepared to draft an amendment that would encompass that? You've rejected every single one of our amendments. Will you have your counsel draft an amendment that embodies what you just said you would accept, or I presume you would accept?

Mrs Johns: Can I suggest that we have a motion somewhat like that, I think, on page 25, which the NDP set up that we're considering at this moment?

Mr Phillips: Do you want to stand this down till we deal with that then?

Mrs Johns: No, because this section is not something we will be supporting.

Mr Phillips: I know that. But I assume that the thing that you say on page 25—

Ms Lankin: I want to speak to that point to clarify.

Mr Phillips: Ms Lankin, maybe you can clarify things, and then I can get back on.

Ms Lankin: I just want to respond to Mrs Johns on that point with respect to the New Democrat amendment, which has been stood down. It essentially is a very weak motherhood amendment trying to get them to even put the words "district health council" into this bill. It does not embody what Mrs Johns just said was the government's commitment with respect to respecting the work and utilizing the work of district health councils.

I think Mr Phillips makes an excellent suggestion. She's made a commitment. Is she prepared to draft an amendment and bring forward an amendment that would embody that commitment?

Mr Phillips: I'm trying to find a solution to this. Are you prepared to draft such an amendment that we can deal with?

Mrs Johns: As I said, if you submit an amendment, we'll have a look at it.

Mr Phillips: Please. You spend \$17.5 billion over there. Mr Wilson, if you're prepared to accept what your parliamentary assistant just offered, can't you have one of the thousands of people over there draft that amendment and bring it forward? Are you prepared to do that? I'm waiting for an answer.

Mrs Johns: I guess from my perspective, I'd like to see what you have in mind, so I'd like you to submit the amendment.

Mr Phillips: I have in mind what you said you would do.

Mrs Caplan: Draft an amendment that is consistent with what you have put on the record that you're willing to do. We'd like to see that amendment.

Mr Phillips: Rather than us trying to guess what you might accept, you put down on a piece of paper what you will accept that embodies what you said you would do, and that is that where there is a community plan developed with the support of the community, you will instruct the commissions that that's the plan. You've said that's what your intent is. Don't let us go through the exercise and then you find one word you don't like. Will you undertake today to bring forward that amendment?

Mr Cooke: Is that something you support?

Mrs Johns: I said when I was talking about it, and I will have to check Hansard, but what I said basically was that the community would prepare a report, we would look at it and have it approved and we would go forward. I'm not saying that every local planning report will be approved. If they want to spend \$45 million, we're not saying that's okay.

Mr Phillips: Will you draft for us the terms that you would agree to a local plan? I think what the public is frightened to death about is that this government, in my opinion, has shown that it will implement its will on anybody. We're trying to provide some safeguards in this

legislation that you're not going to come in and trample on their rights.

I think most communities in this province recognize that it is your intention to send somebody in to restructure—is the assistant finished? This is important to us.

1240

Mrs Johns: It's important to us too. We want to have the best restructuring system in Ontario.

Mr Phillips: Then maybe you could tell the assistant to keep his mouth quiet while you listen to what we're talking about, if you don't mind.

You've indicated that you're prepared to entertain, incorporate in your bill, that where's there broad community support and where it's a reasonable—you shake your head. What are you prepared to accept? You said you would prepare an amendment for us. Are you prepared to bring forward an amendment—

Mrs Johns: I didn't say I would prepare an amendment. I suggested that you prepare an amendment and we would approve it. I don't believe that the communities across Ontario are worried about this. I believe that they believe we will do the best for restructuring that we can. We will give them the best health care possible—

Ms Lankin: "Trust me. Give me a blank cheque. Trust me."

Mrs Johns: Yes, they should trust us. It's been 10 years and the system is getting worse and worse and worse. There is no good health care left in Ontario.

Ms Lankin: "We won't give you any agreement. Trust me. We know best. We're the fathers of the whole province. We'll decide everything that's best for communities. Trust me."

Mrs Johns: I think it would be better for them to trust us. The waiting lines in a lot of hospital areas have gotten worse and worse. It's time for them to trust somebody.

Ms Lankin: Oh, please. "Nothing's been done in this province in health care." Here we go again. "Nothing's been accomplished." You know best. You're not going to give any guarantees in legislation.

Mr Sampson: A point of order, maybe: I believe we're debating the NDP proposed amendment. My suggestion, if we can get ourselves out of this logjam, is that we deal with this particular one. We've stood down a previous NDP motion which, until it's dealt with, will preclude us from dealing with section 8 anyhow. There is another government motion relating to section 8 that perhaps we could move to, subsequent to dealing with the item here. Then, after lunch, we could deal with the stood-down motion to be able to complete the review of section 8, if I could suggest that to get us out of this logjam.

The Chair: Mr Sampson has requested unanimous support to stand down 27. Is that what you're saying?

Mr Sampson: Right, that we proceed with the motion that's on the table and deal with that one—

The Chair: Basically, that's what we are doing.

Mr Sampson: Right. I'm just saying that we're not going to be able to deal with section 8 anyhow, because we've stood down a prior motion, so we can continue the process here and section 8 is still open until that prior motion has been dealt with, the one we stood down that was moved by the NDP earlier.

The Chair: I'm having trouble understanding your point of order.

Mr Sampson: Let's continue. But my point is that we will not be able to close off the matter as it relates to section 8 until we've dealt with the stood-down motions proposed by the NDP people.

Ms Lankin: He's making a procedural suggestion. It's actually quite rational.

Mr Sampson: Then can you guys help me out over there?

The Chair: It is escaping the Chair.

Ms Lankin: Would you like me to explain it to you, Mr Chair?

The Chair: Mr Phillips, did you have something to say on this particular point?

Mr Phillips: I think he's asking me to proceed, so I will.

Ms Lankin: To a vote, Gerry.

Mr Phillips: Oh, to a vote. I'd just make the point that if there's one thing communities feel perhaps most deeply about, it's their local health system, and the thought of somebody coming in from outside—it will be an outsider; there's zero doubt about that—and imposing a complete health care system on them, with no assurance of public input—you say, "Trust us, we will," but the authority is completely ignored.

It's just reinforced by the fact that the assistant has indicated that the government will perhaps be prepared to look at amendments but they are completely unwilling to do their own amendments, and then when we bring forward amendments, they turn them all down. This is a very frustrating exercise, because rather than the government coming forward with language it could accept, they say, "You go away and draft it, opposition, with your limited staff." Then when we bring forward an amendment, you say, "We don't like that because it's got three years instead of four years, or it has 7 am instead of 9 am, so we're going to turn that down."

It just makes the point that rather than the parliamentary assistant being here—I have no difficulty with the parliamentary assistant, but if the minister were here we would have somebody who has some authority to make some decisions. Clearly the instructions to the parliamentary assistant are, "Agree to nothing the opposition says, reject their motions and you'll be rewarded, come Friday afternoon, with a pat on the back." It's not a very useful process.

Mrs McLeod: I concur. If the committee and the parliamentary assistant are interested in expediting, I don't think we'll achieve that by standing down. We'll stand down every section of this bill until we can get clarification.

But it's equally clear that the parliamentary assistant has raised a concern that is in direct contradiction of assurances that have been given by her and by other members of the committee, which is that there is a guarantee that the local input, the local planning process and indeed the role of the DHC will be respected in any involvement of the restructuring commission. The parliamentary assistant has now said that these powers are needed particularly where there is no report of the DHC, which raises the concern of what local planning process will be put in place.

You've said, "Bring in amendments." We've brought in amendments which do no more, as my colleague has said, than put into the legislation what you've stated repeatedly in committee, which is that the planning process will be in place and indeed that where there is no agreement the Minister of Health would have a role in resolving the disagreement. Since you cannot undertake to bring in an amendment yourself, do not have that authority—and I don't think we're achieving anything by prolonging it—will you at least undertake to directly ask the Minister of Health if he will bring in an amendment that will acknowledge in this law the local planning process and the role of the DHC?

Mrs Johns: I just want to draw to your attention that I never said that all local planning would be accepted carte blanche. I said that if they came out with a process that did not meet the needs of the community or that cost a lot of money or that didn't cover specific diagnostic areas or something we needed—kidney dialysis or cardiac, whatever—we may in effect turn down a local planning process, as we have in different areas asked them to go back to the planning board to look at it again. I never said that the local planning process was the only basis we were going to look at for hospital restructuring, but it will certainly be an integral of us deciding on how we should proceed.

Mrs McLeod: All we're saying is, please bring forward an amendment that recognizes in law exactly what you've said.

The Chair: Shall we move on and vote on this particular amendment?

Mrs Caplan: Mr Chair, could I for just one minute or less? As much as I respect what this amendment is trying to do, I can't support it because I don't support having any one individual of the commission being able to go into any part of the province and act individually, where their decision cannot be challenged. I think that's bad law and I don't think this amendment fixes that major concern I have. I don't think it makes it even slightly better. The whole thrust and ability of the minister to be able to give powers to one individual, who is not accountable and can't be challenged, is a wrong premise, wrong policy. That's why I'm not supporting the amendment.

The Chair: An amendment has been proposed by the New Democratic Party.

Ayes

Lankin, Silipo.

Nays

Caplan, Ecker, Hardeman, Johns, Maves, McLeod, Phillips, Sampson, Tascona, Young.

The Chair: That motion is defeated.

Is it your pleasure that we proceed to the next one or that we break for lunch?

Ms Lankin: Keep going.

The Chair: Okay. The next one to be considered is a government amendment.

Mrs Johns: I move that section 8 of the Ministry of Health Act, as set out in section 1 of schedule F to the bill, be amended by adding the following subsections:

"Mandate of commission

"(8.1) The commission shall be established for a period of up to four years and, at the end of that period,

"(a) the appointments of all the members of the commission are revoked; and

"(b) the commission shall cease to perform any duties or to exercise any powers assigned to it under this act or any other act.

"Review

"(8.2) The minister may, at any time during the existence of the commission, appoint one or more persons to review the activities and operations of the commission and to report on them to the minister."

We have asked that the commission cease to be in existence after a four-year period. Existing members' appointments would be revoked. It allows for the minister to require review of the commission at any time in that period.

1250

Mr Cooke: I just have one comment on this. When I first heard that the government was going to be introducing amendments on this and other parts of the bill that have sunset clauses, I thought this is the most manipulative thing a government can do. You give all the powers you want, and you try to set people's concerns aside by saying: "Look, we're going to sunset this after four years, at the end of our first term in office, after we've closed down dozens and dozens and dozens of hospitals, after we've sent commissioners into communities to design plans that don't reflect the community desire at all. After we've abused power by giving ourselves this kind of power for four years, just before we go to the people for an election, we're going to sunset those provisions." This is absolutely the reason why people in this province are cynical about governments and politicians, and it's just baloney. You're not going to get away with this.

The Chair: Ms Lankin. I'm sorry—yes, Ms Lankin.

Ms Lankin: We are sure it's this Ms Lankin? Okay. I just wanted to be sure.

Mr Phillips: Are there two?

Ms Lankin: On some days with this Chair there are.

My colleague has made a very good point. A lot of groups came forward and said, "We want to see these powers sunsetted," because they're very concerned about those powers being in place and they don't want them in place forever. In fact, it was a last-ditch plea to say, "Let's get some control over this, that at least after this government these powers won't continue to be in place." I believe this is the absolute wrong way to go about it. The intent of the powers you want to utilize with respect to health care restructuring should be set out in the act, and that's the point I've been trying to make all the way through this.

The blank cheque approach is not good law, not good governing, and there are very real reasons for the people of Ontario and the members of the opposition parties to be concerned, particularly when we hear some of the responses from the parliamentary assistant that seem to suggest one thing in one breath and something else when pushed and asked to clarify.

I have no confidence at this point that there is a framework for health care reform within which this

government is going to operate. You've not articulated any principles of a framework of determinants of health, for example. You've not adopted any policies with respect to a shift from illness treatment to illness prevention. We don't know, other than bottom-line fiscal dollars—that's the only thing we hear from you.

People have a right to be concerned if they think you're going to let the Treasurer run the health care system in this province, which seems to be the direction you're going. All we hear from Mrs Johns is: "Sixty reports are going to come in and we have to do something with them, but we don't know what. One moment we're going to listen to them, the next moment we may not. We may like what they say, we may not like what they say." Based on what criteria, on what framework of health policy, are you proceeding? You have not told us. Have you adopted the framework of health policy that the previous government adopted, based on determinants of health, based on the shift from institution to community, based on the continuum of health care through the community?

There was a complete document set out that gave a framework for how health care reform and restructuring was going to proceed and the policy framework within which that would be implemented. We haven't heard from your government, so how can we have any trust in the direction you're going to take? Well, it's not a question of trust—we don't know; you haven't told us.

I think this is a real failing with respect to proceeding with a bill like this that gives such wide powers into the minister's hands and for the minister to delegate to individuals, and for everything else to be set out in regulation, done behind closed doors around the cabinet table, 18 people raising their hands and saying, "Yes, sounds good to me," with the ability to completely override what local planning processes have recommended. There's nothing in here and you won't even come forward with an amendment to tie yourself to having regard for local planning studies. You won't even put in that kind of language.

I heard Mr Sampson talk about the fact that this section's stood down because of an amendment we brought forward. I'm tempted to withdraw it. I don't know why we should continue to waste time. You're voting against everything we put forward anyway. That was such a motherhood amendment, so simple. It simply says that this commission, when it's exercising these new powers and duties, will do so with the goal of restructuring the health care system and providing adequate health care in the province and having regard to local district health council reports. It amazes me that we hear the parliamentary assistant in one breath commit to something much stronger than that, but refuse to bring forward an amendment to embody that in the legislation. Of course, the next time a question's asked, the answer gets changed.

I have a significant problem with this particular amendment before us. For a government that talks about wanting to do away with regulation and layers of government and layers of bureaucracy—when we've said the accountability should rest with the minister, you felt a little bit touchy about the fact that maybe there was a

lack of accountability if the minister was assigning all his powers to this commission, so to deal with that you add a clause that says, "The minister may, at any time during the existence of the commission, appoint one or more persons to review the activities and operations of the commission and to report on them to the minister."

Let me get this right. We have local district health councils that are going through the whole process of trying to develop a plan for the delivery of health care services in their geographic area. They submit that to the ministry, presumably. We don't know which process this is going to go through. Ms Johns at one point in time said the commission will take that and look at it, and at another point in time said the minister will take it and approve it or not approve it.

The commission then is another body on top of that, which may not take the advice of the local district health councils and which may, as an individual or a group of individuals on this commission, go into an area and essentially throw out all the local work that's been done and do it over again—and presumably without talking to the minister, because the minister has given his powers to this commission; the minister doesn't retain the powers. It appears that the minister isn't even going to talk to the commission, because if the minister wants to talk to the commission, he's going to have to appoint one or more other people to come in and review the activities and operations of the commission and then report on them to the minister.

There are only eight to 10 commissioners, as I remember you were saying. Can't the minister go and talk to the commission and find out what it's doing? Can't they report to the minister what they're doing? Why do you have to appoint another group of people, a commission over the commission, to talk to the minister? This is a bureaucratic nightmare. Come on, you reformers over there, where have you all gone to? How have you allowed the bureaucratic tentacles of the octopuses in the ministries to come up with all these convoluted processes of commissions over top of councils and review groups over top of commissions to talk to the minister? What the heck is going on?

The Chair: On that note, it is the lunch break, so—

Ms Lankin: I will wrap up. I don't need to hold on to the floor for when we come back. Let me simply say that it is a cynical move to put forward this kind of sunset of the powers of the commission when there are other sections where powers are vested in the minister that aren't sunsetted. While I agree that this commission and some of the other areas should be sunsetted in four years, I think they should not exist at all, so I am having a problem with the whole section and our caucus will be voting against this whole section.

Mrs McLeod: Mr Chair, on a point of order just before we break: It's my understanding that a little earlier this morning, when the Premier was asked whether he would come to the committee—obviously not by members of the committee but by members of the media—he indicated that he was not familiar with all the parts of the bill but that the ministers would be speaking to it. I'm not sure, Mr Chair, whether that gives licence to place again the motion that the ministers appear before the

committee, but if either I consider that motion to be in order after we return or the government members consult with the Premier and find out if that's what he was recommending, I would appreciate it.

The Chair: Thank you, Mrs McLeod. We're recessed until 2 o'clock.

The committee recessed from 1300 to 1401.

The Chair: Welcome back. Where we left off this morning, the order of speaking was Mrs Caplan, Mr Phillips and Ms McLeod. In view of the fact that Mrs Caplan isn't here, Mr Phillips, did you want to go ahead?

Mr Phillips: Yes, I did, Mr Chair.

The Chair: Just while Mr Phillips is getting organized, there have been some more submissions that have come through various members' offices that were asked to be circulated, so you have those at your desks.

Mr Phillips: Yes, I did want to speak, Mr Chair, if I could. Just to refresh our memory, we're debating a government motion that essentially sunsets the commission, which is the language used to mean that after, I believe it's four years—yes, the commission may be established "up to four years"—the commission would then be dissolved.

The problem we have with this is, pardon me for the extreme language, but there's no such thing as a temporary dictator. We find the mandate for the commission frankly too extreme.

I guess from the government side, if you believe this commission is a good idea, if you really believe that, and it's fairly structured—the challenges in health care aren't all solved in four years. As a matter of fact, it's probably a huge mistake, if you think this is a good idea, to put a deadline on it, because if you think this is a good commission for restructuring of health, a community may require the services that you think it does, not in four years but in five years or in six years. If you believed that this thing was really well structured, you wouldn't be sunsetting it. You would say, "This is a permanent part of managing our health care system in Ontario."

Clearly, the only intent of this is, you know the powers you are giving this are extraordinary. I personally don't accept that the debt-deficit problem is so great that you have to turn over extraordinary powers for a short period of time to some group or individuals to execute your authority. Surely we in a democratic society can put together a way of handling these matters of dealing with our debt and deficit that aren't so draconian that even you acknowledge this thing should be sunset in four years and gone. Maybe it makes the Ontario Hospital Association feel better. I don't know. They think you're going to do all your dirty work in four years and then go away.

But I repeat: If this commission makes sense and is sensible and is effective, then why would you not want it around permanently? If, on the other hand, it is, as we believe it to be, an abuse of power, one that you're embarrassed to keep around, one that you know you shouldn't have and therefore you're imposing this sunset provision, we can understand that. But if I were in your shoes, if you want to get rid of it in four years, it should never exist.

I know the government members had no idea what was in this bill. You were as much in the dark as we were

about the bill. You were just as surprised by it, and now you've got no choice. You have to defend this thing. We know that.

Mr Bud Wildman (Algoma): Not even the Premier knew that much.

Mr Phillips: Mr Wildman, how are you?

You have to defend this bill. But if you think you should be rid of this thing in four years, my advice to you is, get rid of it right now and design this thing properly.

Obviously, we'll be voting against this and asking the government members to kind of consider their own conscience. As I say, I don't believe there is any such thing as a temporary dictatorship.

Mrs Caplan: I listened very carefully when we had representation, delegations, come before this committee, and I heard them say they were very concerned about the powers that the minister was taking unto himself. They were very concerned about the powers that the minister could delegate to a restructuring commission. They did say they supported a restructuring commission with duties and responsibilities, as we have discussed and suggested that this bill would be amended to permit.

I thought a lot about that, and I don't think that this government amendment would give any comfort to all of those groups and presentations who came and said, "Don't delegate ministerial responsibility to a commission." They said, "Sunset the commission," and the reason they wanted it sunset was because they were concerned that the voluntary governance, which has been such an important aspect of the delivery of hospital services in the province, would be threatened by having a commission in place.

I understand that, because this bill potentially threatens voluntary governance, but it's not just through the restructuring commission; it's through the powers of the minister to micromanage, through the appointment of a supervisor and all of those other aspects of the bill in ministerial powers. It's the complications of the different parts of this bill all put together that I think people were very uncomfortable with.

What this amendment does is say: "We haven't responded to those concerns that were raised by the presenters to this committee in any of their areas of concern except one, and that is that the commission will cease to exist after four years. But during those four years, we will suspend democracy. We will delegate"—the government is saying—"all of the extraordinary powers. We'll do it by regulation. We can do it not only to the whole commission but to any one individual." That is still permitted during this four-year period, and every group save one, every presentation save one, and there were hundreds of presentations that we had before the committee, said that the minister must not delegate his authority to a commission.

So I can't support the establishment of a commission. I therefore can't support the sunset of a commission that I don't think should be established in the first place.

What we have tried to do to respond to those presentations that said a restructuring commission without those powers but with duties and responsibilities, clearly framed in the legislation, a mandate that is clear, whether

it's in legislation or not, is supportable, is that I have proposed an alternative way for the minister to do that without it being part of the bill.

1410

The minister could establish a restructuring commission under the Ministry of Health Act, just as the district health councils have been established. He could, by virtue of his confidence in the recommendations that commission would give to him—by accepting their recommendations, they would have all the authority they would need to see that plans were implemented in the community, because people would have the right to appeal to the minister and the minister would say, "I've decided what the commission is doing is good," just as the minister can say, "I've decided what the district health councils are doing is good and I support them." By the weight and the virtue of the support of the office of the minister, district health councils for 20 years have played an important planning role.

But beyond just their planning role, they have done implementation work. They have recommended where dollars should be spent. It was called rationalization in those days. They have recommended rationalization plans to the minister that were implemented when the minister said, "This is good work, go to it." And it was done.

So the minister, in order to respond to the Ontario Hospital Association and others who say, "Set up a commission, but set up a commission that does not have the powers of a minister and that is accountable and can be appealed to the minister"—that's the accountability, that the decision of a commission can be appealed to the commissioner—that can all be done without this legislation. It can be done under the Ministry of Health Act. The powers under that act, as a former minister I tell you, are significant enough to be able to establish a restructuring commission.

What I'm saying to those people who came before this committee and said, "We support a restructuring commission," my answer to them is, the minister can do that today, and he can do that and respond to your concern about that commission not having the broad sweeping powers that this bill takes unto the minister and which the minister can delegate.

I will not be supporting this amendment, because to support this amendment would support a commission where individual commissioners would have the power of a minister with no opportunity for communities or for individuals to have any recourse to decisions made by that all-powerful body. In effect, we would be suspending democratic rights and democratic process for the period of time that this commission was in place.

The other reason I'm not going to support this is that it sets a terribly bad precedent. In the 10 years that I have been here, and I have participated in all kinds of sunset reviews, I have never seen—I have never seen—government ministers, government cabinets, give up powers. Once the precedent is established for a commission such as this, if my colleague Mr Phillips is correct and the work is not finished, it will be very easy to see the sun rise, as opposed to the sun set, on this commission, and potentially future commissions, because you'll be able to argue: "You see, we had a commission. It was there. We still need it."

So while I said that I was prepared to consider a limited time frame on a commission whose duties and powers were scoped and whose mandate was clear in order to give some comfort to communities that if it was truly for that kind of restructuring, as long as it didn't have those kinds of powers—and that could be done without this legislation—I am very concerned that this amendment will enshrine forever and a day the opportunity to just not enact or to repeal the sunset provision of the legislation and that all of our worst fears—all of our fears about the suspension of democracy and the suspension of due process and the suspension of rights of appeal, all of those things that we hold so dear—will change Ontario forever, simply because for the next four years, under this legislation, you will have an all-powerful commission that nobody will be able to appeal its decisions whatever. I think that's a very dangerous precedent. I don't think it's necessary. I think you can have a commission without this. I cannot support this amendment.

Mrs Johns: I just want to remind the committee, the people who were on the health committee, that a number of groups came forward and asked for this sunset provision. We had the Sisters of St Joseph of Sault Ste Marie.

Mrs Caplan: They said, "Don't delegate power."

Mrs Johns: We had the Sudbury General, we had the Ottawa General and we had the OHA come forward. The OHA suggested a time frame of three to five years, and we of course have chosen four.

In the past, previous governments have set up planning processes for us to be able to restructure, but they have never come up with a process to be able to implement, to be able to move forward with this structure.

I have a clipping from the Sudbury Star that says:

"Inevitably the goal of improving cost-efficiency in the delivery of hospital services fell by the wayside as individual hospitals were too concerned with preserving their own turf and separate agendas. Finally it appears that hospitals will no longer be able to prolong their turf wars as the provincial government puts an end to this intransigence that has reigned in the local system. It is hoped that the local hospital officials will see the light and finally cooperate to ensure a voluntary restructuring of services."

We believe that if we have an independent group to review the activities and the operations of the commission, what we will have is a strengthened accountability to the minister. We believe that this is the right way to proceed to deal with four-year sunset and to deal with increased accountability with the minister.

The Chair: Any further discussion on the motion? Shall the motion, as proposed by Mrs Johns, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: The motion carries.

Mr Wildman: Mr Chair, I'm not a member of the committee, but I would like to ask a question on the

procedures, for my benefit and for the benefit of all of us, I guess—I hope. I understand that this number represents 141 amendments that have been put by the government. How many amendments have we dealt with? Is the 28th?

The Chair: We've dealt with 23.

Mr Wildman: Okay. I'm very interested in debating amendment 102. I would like you to tell me when we would likely get to that on this committee so I would know when to come back.

Mrs Ecker: Ask your colleagues.

The Chair: Mr Wildman, I have no idea.

Mr Wildman: You anticipate that it will be debated before Friday?

The Chair: If it is to be debated, it will be debated before Friday at 1 o'clock.

Mr Wildman: And all of the amendments will be debated.

The Chair: The amendments that we get to by Friday at 1 o'clock will be debated.

Mr Wildman: You would not put amendments that haven't been debated?

The Chair: That's not my decision, sir.

Mr Wildman: Oh, dear, that's not very democratic.

The Chair: As you know, Mr Wildman, the orders under which this committee is operating state that all amendments will be deemed to have been moved by 1 o'clock on Friday.

Mr Cooke: For Mr Wildman, could we move to amendment 102?

The Chair: We will be considering the amendments, as we agreed, in order.

Mr Clement: Fine with us over here if you want to have unanimous consent, Mr Chair.

Mr Wildman: If that's the case, 141 amendments indicate very well-drafted legislation, obviously, as well as sincere concern for the people who have been able to make representations to the committee, I'm certain. But if you would like to go to amendment 102, that's fine with me.

Mr Phillips: It's not a problem.

Ms Lankin: Mr Chair, again, just for clarification of this issue, I would like to make sure we are talking about the total number of amendments: 141 are just the government amendments, and of course we know that by and large the government—well, so far—has voted down every opposition amendment, but there are actually I think 340-odd amendments in total. Is that correct?

The Chair: I think the regular members of the committee, who have had the book for a couple of days, know that there are 340 pages of amendments.

1420

Mr Wildman: I meant 141 government amendments. I didn't realize there were a number of other amendments.

Mr Phillips: Oh, there are.

The Chair: Mr Wildman, can we get on with the proceedings?

Mrs Ecker: Have you not been meeting with caucus on your amendments?

Mr Wildman: I assumed that our amendments were matters that would be debated prior to the end of the committee work. I didn't assume that you would just deal

with government amendments and not allow opposition amendments to be debated.

The Chair: Mr Wildman, would you mind explaining to us, as it's your first visit in here, exactly what your purpose is?

Mr Wildman: To find out what was going on.

The Chair: Did we not explain it to you?

Mr Wildman: I beg your pardon?

The Chair: Did we not explain it to you?

Mr Wildman: Well, thank you very much, you've explained very clearly that you don't intend to deal with all these amendments and that you're going to deem some of them to have been passed even though they haven't been debated.

Mrs Ecker: Check with your House leader.

The Chair: On section 1, that is the last of the amendments that we've been asked to—

Interjections.

The Chair: Are there any additional amendments to section 1 of schedule F? There is the one that we stood down. Mrs Johns, you requested that we stand down the NDP amendment; I believe it was number 25. Are you prepared to deal with that now?

Mrs Johns: I think it's been agreed to, thank you.

The Chair: Okay. Ms Lankin.

Ms Lankin: The amendment that has been tabled, which was a new motion, was to schedule F to the bill, section 1, subsection 8(7.1) of the Ministry of Health Act. Am I on the right one? Yes.

I move that section 8 of the Ministry of Health Act, as set out in section 1 to schedule F of the bill, be amended by adding the following subsection:

"Function of commission

"(7.1) The duties and powers assigned to the commission under this or any other act shall be duties and powers with respect to the development, establishment and maintenance of an effective and adequate health care system and the restructuring of health care services provided in Ontario communities having regard to reports of local district health councils."

There has been some discussion with respect to this, and there is a minor change in the wording which Mrs Johns has indicated would make this motion acceptable to her. I have a replacement motion that is prepared, but it's not officially tabled yet. So I'm not sure in terms of the procedure if I just read the change into the record. Legislative counsel has it.

The Chair: Is it a replacement for this one, Ms Lankin? So you're withdrawing this one?

Ms Lankin: Yes.

The Chair: Okay. Thank you.

Ms Lankin: So this hasn't been circulated, but it's very similar. People can follow along with the one they have in front of them. You'll see the differences.

I move that section 8 of the Ministry of Health Act, as set out in section 1 to schedule F of the bill, be amended by adding the following subsection:

"Function of commission

"(7.1) The duties and powers assigned to the commission under this or any other act shall be duties and powers with respect to the development, establishment and maintenance of an effective and adequate health care

system and the restructuring of health care services provided in Ontario communities having regard to district health council reports for those communities."

You can see the wording is very specific; it just relates the reports to those communities.

If I may, may I say that while I am moving this amendment, I am very distressed that an amendment as watered down and as weak as this is the only thing where we were able to get the government to agree to build some linkage between the work of the commission and local district health councils. This language, as you can see, attempts to say that these unprecedented powers that are going to be handed over to the commission at least have some reference to the delivery of health services in this province, because people who have been following this will know that as the bill is set out there is no definition to the commission, what the terms of reference are, what the mandate is other than the length of time it will be in existence, what the powers are, what the limits on the powers are. It simply says that there shall be a commission, that it shall have powers and duties as assigned by the minister and as set out in regulations.

Quite frankly, it, to me, is very, very poor legislative form to establish such an all-encompassing body as this that is going to be so key and critical to the future of health care in this province and not provide any sense of what the conditions are attached to that, what the terms of reference are, what the limits on the powers are, what powers specifically are going to be given to it. I'm very sorry that through the course of this we've not been able to get the government to give definition to any of those areas.

This amendment I fully admit is very weak, very soft, but it at least says for this commission that can have powers and duties assigned to it under this or any other act, any other law in the province of Ontario, at least we specify that they're going to be dealing with health care and not highway construction or something like that. That's how badly your bill's drafted. You could assign powers to that commission under any act in the province of Ontario.

It also, which I think is important, makes reference to reports from district health councils. Again, I believe it should be a much stronger reference. This just says "having regard to" those reports. But I'm placing this motion because later, and I will invite you to look ahead, there are amendments that I'm proposing which have some accountability for the commission in tabling reports with the Legislature of what they intend to implement and how they are using these powers, and accompanying those reports must be the reports of the district health councils that they had regard to, at least.

This does not, obviously, tie them to those district health councils reports. We've never suggested that the minister in the end didn't have to make a decision of whether to approve a report or not. And it doesn't in this case tie it to a district health council plan for restructuring. We obviously hope that in those communities where there is a consensus that's been arrived at, the report that comes forward is actually a plan for implementation, but we've heard often from the parlia-

mentary assistant her concern about communities where there wasn't a consensus.

At the very least, I believe there should be a report from that district health council about what the state of affairs is in that community and what the issues are, and that the work of the commission and the minister in reviewing this should at the very least be informed by a report of that nature that lays out the local landscape. It would be horrendous to have a situation where that procedure wasn't followed.

I don't move this amendment with a great deal of pride in terms of thinking that it addresses some of the very serious concerns I have with the commission and the unprecedented powers being given to it and the lack of definition in the legislation, but it is the last-ditch effort and the only thing we could get the government to agree to, to build any kind of linkage between the work of this commission and the work of local district health councils. So I move it because I think it is essential that there at least be some linkage built into the legislation, and while this doesn't accomplish nearly what I believe needs to be done, it is the only thing that I was able to get the government to agree to. So for that reason we put it forward and our caucus will be supporting it.

Mrs Caplan: I'll be very brief. I think Ms Lankin is quite correct in not wanting to take any pride in having this amendment put forward. It is minimal. It doesn't change or fix, it just makes slightly better, that which is seriously flawed. It's in that spirit I take no joy in supporting this. I don't support the commission as it is constructed, but at least here there is a link to the important work that's being done by district health councils in the community. I believe the legislation should reference that. If this is the only thing the government will permit, I will be supporting it.

But I offer no comfort to those who think this is going to improve a very bad approach, bad concept, because this commission will not have to take anything other than "have regard," will not have to take seriously the work that's done, and will be able to ride roughshod, override and in fact pay no attention whatever to the important work that is done in communities. An individual can go in and do whatever he or she wants to do in a community and there will be no recourse or action that can be taken. I think that's undemocratic, but at least the legislation will now say that they have to pay due regard, even though if you think they didn't pay due regard, you're not going to be able to do anything about it.

1430

Mrs Ecker: I think Ms Lankin has argued very forcefully about the need for an amendment such as this. We certainly heard from many deputations as we went across the province that the local planning process was very important to them. In some areas it had worked very well, in some areas it hadn't, but they all said they thought that local link was very important. We felt that we had made it very clear that the district health councils were still there in the mix, because we hadn't amended section 8.1. I think it's interesting to note that in the previous legislation there was nothing there that caused or forced ministers of Health to listen to district health councils, but past governments and past ministers of

Health have quite seen the wisdom of consulting district health councils on many issues, and in fact have assigned them many tasks to do.

So that authority, that power, that ability to advise, to recommend and to plan was still in the legislation because we felt that it was important to maintain in the legislation. We heard from many deputations and we asked them, would they feel more comfortable if there was a more specific link between the commission and those district health councils? Many of them said that would indeed ease their mind. So I think we have an amendment here to the legislation that helps put that link in place. I think it's a good amendment to do that and so I would be very pleased to support this motion.

Mr Phillips: I too will be supporting it, really out of self-interest almost. It's my hope that maybe you can find one of our motions—

Mr Sampson: We're looking awful hard, Gerry.

Mr Phillips: —and change one or two words so that in the years ahead when I have this bill, I can say, "Frankly, we spent four weeks on it and nothing changed other than that word," and there will be one or two words that you've agreed to change as a result of the opposition. So I'm pleased to support it. It does actually, I think, improve the bill, and that's what we're all about. So I'm pleased you've changed a couple of words and now we have one amendment. I hope before we're through there may be three or four of our amendments you may be able to massage enough that you can finally agree to them.

Mr Clement: Dare to dream.

Mr Maves: Just quickly, the amendment says that the restructuring can occur if the commission is having regard to DHC reports of local communities. We had previous discussion about how in some communities these types of DHC reports were unavailable. I just want to ask, if there is a community where DHC reports are unavailable, does that mean the restructuring process can occur with this amendment? If they're not available, then the restructuring process can occur anyway?

Mrs Johns: Yes.

The Chair: Did you have your question answered, Mr Maves? I'm not sure who the expert would be on it. Mrs Johns?

Mrs Johns: Yes. That's the answer.

Mr Maves: So we wouldn't need to put having regard to DHC reports of local communities "where available"? That's not necessary in this?

Mrs Johns: We had it looked at by our legal counsel over lunchtime, and they're happy with that.

Mrs Caplan: I just want to put this on the record, because frankly I'm sick and tired of hearing the rhetoric from perhaps well-meaning—and Janet, I think it is well-meaning, but I was at a meeting where I heard Jim Wilson very clearly say he intends to revert the mandate of the district health councils back to what it was 20 years ago. He was very clear that he does not support the work that's happening in the communities by the district health councils. I heard him say that personally.

The Chair: Does this have anything to do with this motion?

Mrs Caplan: Well, it does, because this motion for the first time references the role of the district health coun-

cils, and for the government to have said this isn't necessary because we support the DHCs, the minister hasn't said that. There's no assurance. The section you referred to that establishes district health councils is at the pleasure of the minister. This bill, until this point in time, had no mention whatever of the important work that's been going on in communities by district health councils.

The Chair: Any further discussion on this amendment? Recorded vote.

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, McLeod, Phillips, Sampson, Silipo, Tascona, Young.

The Chair: The amendment carries unanimously.

That being the end of any amendments we have—

Mr Cooke: Let's pack it in and report the bill to the House.

The Chair: That being the end of amendments to section 1, shall section 1, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Phillips, Silipo.

The Chair: Section 1 carries.

We now move to section 2. The first amendment I have listed for section 2 is from the government.

Mrs Johns: I move that clause 12(c.1) of the Ministry of Health Act, as set out in subsection 2(1) of schedule F to the bill, be struck out and the following substituted:

"(c.1) assigning powers and duties to the Health Services Restructuring Commission and respecting any conditions with respect to the assignment of those powers and duties."

This is a regulation-making power which permits the commission to receive the powers of the minister to issue directions to a hospital to facilitate restructuring, either the closing or amalgamating of a hospital. The Ontario Hospital Association in its report when it came to us on December 18 suggested that it will assist the government in making these regulations.

Mrs Caplan: The Ontario Hospital Association also said you shouldn't delegate the powers to the commission. Does this amendment allow for the delegation of ministerial powers to the commission?

Mrs Johns: Yes, it does.

Mrs Caplan: So don't you think it's unfair to say that the Ontario Hospital Association asked for this when they told you specifically, "Do not delegate ministerial powers"?

Mrs Johns: No, I don't think it's unfair.

Mrs Caplan: This does not do what the OHA asked you to do. This still allows for the delegation of powers to the commission, so I object to you suggesting that this solves the concerns the Ontario Hospital Association and every other presenter had that came here and said, "Do not delegate ministerial powers." Mrs Johns, I expect a higher level of performance when answering those questions. If you want to say what this does, do it, but

don't give as your defence the fact that this satisfies the Ontario Hospital Association when it clearly does not. They don't want you to be able to have the minister delegate his authority and powers. They don't mind if the commission has duties, but they don't want powers delegated to an unaccountable, dictatorial commission. Don't you get it?

The Chair: Any further discussion on this amendment proposed by Mrs Johns? We'll take the vote.

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Phillips, Silipo.

The Chair: The motion carries.

The next amendment to section 2 is a Liberal motion. In view of the fact that it is the exact opposite of what we just passed, I rule it out of order.

1440

Mrs Caplan: I would point out, as you rule it out of order, that in fact this motion would satisfy the concerns of the Ontario Hospital Association.

Mrs McLeod: Mr Chair, could you point out in what way it's in direct opposition to the previous amendment?

The Chair: The motion that was passed by the government added the word "powers" and this particular motion doesn't make any reference to the word "powers." That was the only change from the previous motion.

Mrs McLeod: Quite clearly, the focus of the government amendment was to make it clear that power could be delegated, and therefore it is contrary to our motion, which would say power should not be delegated.

The Chair: As I understand it.

Are there any further amendments to section 2? Shall section 2, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Phillips, Silipo.

The Chair: Section 2, as amended, carries.

Ms Lankin: Mr Chair, just before we go on to the next motion, because that moves us into section 3, I have one question I would like to place—it's an interpretation I'd like to ask for—that deals with sections 1 and 2 that we've just passed. It'll be brief. It's a clarification.

Ms Johns, could you explain to me, under subsection 8(7) you'll know that the government members carried a government amendment which added the word "powers": "The commission shall perform any duties and powers assigned to it by or under this or any other act." And in section 2, the government members just passed an amendment which in the regulation-prescribing section set out that you can make regulations assigning duties or powers, the same sort of language.

Could you tell me why, in subsection 8(8), where you make the regulation assigning a duty to the commission that can be done on a geographic-specific area, not powers? In all the questions we asked you earlier about

an individual commissioner being able to go into a geographic region and exercise the full duties and powers of the commission, you responded, "Yes, that's the case." In fact, as I look at this, when you didn't amend (8), you can only assign duties to those individual commissioners to act on their own and not powers.

Mrs Johns: I'm going to defer that to Mrs Czukar.

Ms Czukar: We don't believe it's necessary to assign powers under subsection (8) of that section because the commissioners would get those powers assigned under subsection (7). Assigning duties with respect to particular areas or particular kinds of tasks would only apply to duties; they would already have those powers assigned. So we don't believe that language is necessary.

Ms Lankin: Then I do have to ask the question, because I asked this the first time, why you needed subsection (8). Now you're telling me that the commission overall has powers and duties assigned to it. In (8) it seems to be something that is giving greater specification, that "where a duty has been assigned to the commission" a regulation can be set out that a specific member or specific members can carry out the duty in a specific geographic area. Presumably, you can't make a recommendation that a specific member or specific members could carry out powers that have been assigned to the commission in specified geographic areas. Is that correct?

Ms Czukar: Powers and duties are different, which is why we need to use both words.

Ms Lankin: I realize that.

Ms Czukar: Duties are mandatory. If the commission is assigned duties, that's their mandate from cabinet and that's what they're expected to do. In order to carry out those duties they may need certain powers, and if those powers aren't explicit, they only have the powers that a corporation has normally in law. That's why we have to have the powers assigned from particular acts that may be different kinds of powers from ordinary corporate powers.

What I'm saying is that they already have the powers to carry out duties, so with respect to sub (8), which allows for the assigning of particular duties such as carrying out a particular restructuring report or a district health council report, or with respect to a particular area, that commissioner would already have had the powers assigned to it in order to carry out that duty in that area.

Ms Lankin: I have a real problem understanding why you needed (8) at all, then. If you had to specify that an individual member had to be given the duties of the commission by regulation in order to carry it out as a sole member and not as the commission overall, why do you not have to specify the same for that individual member to carry out a power which has been given to the commission overall and not to an individual member? What is the difference there?

Ms Czukar: Without subsection (8), the duties that were assigned by the regulation, passed by cabinet, under the other subsections, would have to be carried out by the whole commission. All the commissioners would have to meet and would have to make a joint decision about any particular aspect of a restructuring activity implementation. This allows for one person to work on one report or with one community without having to have the whole

commission make those decisions together. But they already have the powers.

Ms Lankin: Presumably to exercise a power, the whole commission is going to have to give approval before the individual member can exercise that power, because you didn't include power in subsection (8).

Ms Czukar: I suppose it's open to interpretation.

Ms Lankin: I think so.

Ms Czukar: Our view would be that the commissioners have the powers, once they're assigned by regulation under this act, in order to carry out their duties.

Ms Lankin: Collectively, not individually. Section (8) you needed to give individuals powers, otherwise you wouldn't have said, in section (8), that's what you told us you needed it for.

Ms Czukar: That's not our view, but people may differ in their legal interpretation.

The Chair: Okay, we now move on to—

Mrs Caplan: I assume you're going to vote on this amendment.

The Chair: We already did. We just finished voting on section 2.

Mrs Caplan: I thought you were on the section 3 amendment.

The Chair: Ms Lankin asked for the opportunity to ask her question first.

Mrs Johns: Mr Chair, can I ask permission for Mrs McKeogh to come forward? She is the legal representation from the ministry for the public health act—Public Hospitals Act, I'm sorry.

Ms Lankin: Mr Chair, shall I get on with the next amendment?

I move that section 3 of schedule F to the bill be amended by adding the following subsection:

"(2) Section 1 of the act is amended by adding the following definition:

"'Commission' means the Health Services Restructuring Commission established under section 8 of the Ministry of Health Act."

Essentially this is the kind of amendment that is of the category of a technical amendment. It gives a definition to the use of the word "commission" in the Public Hospitals Act.

As you know, the sections we just passed in Bill 26 that create the commission are under the Ministry of Health Act. Some of the further amendments I will be putting deal with the way in which powers are exercised under the Public Hospitals Act, including things around closures and mergers of hospitals, and those amendments make reference to reports or recommendations or actions of the Health Services Restructuring Commission, so it's necessary in the definition section of the act to define what is meant by "commission" in those further amendments.

Mrs Johns: Mr Chair, can I ask that this be stood down until we decide if we need to have the definition of "commission" in the public health act? It will depend on whether some of the motions being presented by different parties are approved.

Mrs Caplan: Public Hospitals Act.

Mrs Johns: Am I saying it still? I'm sorry. The PHA.

1450

The Chair: Do we have consent to stand this amendment down? Okay.

We go on to section 4. Are there any amendments to section 4? Shall section 4 carry?

Ayes

Clement, Ecker, Johns, Maves, Sampson, Young.

Nays

Caplan, Lankin, McLeod, Silipo.

The Chair: Section 4 is carried.

Are there any amendments to section 5? Shall section 5 carry?

Ayes

Clement, Ecker, Johns, Maves, Sampson, Young.

Nays

Caplan, Lankin, McLeod, Silipo.

The Chair: Section 5 carries.

Are there any amendments to section 6? I believe the first one we're going to deal with is a Liberal amendment.

Mrs Caplan: I move that section 5 of the Public Hospitals Act, as set out in section 6 of schedule F to the bill, be amended by adding the following subsection:

"Limitation

"(2.1) A condition imposed under subsection (2) shall not restrict the administrator or the board in the management or operation of a hospital but may require that the grant, loan or financial assistance be dedicated to the provision of specified hospital services."

I believe this would respond to some of the concerns about micromanagement. It would avoid micromanagement of the hospitals by the minister through the condition of financing from the minister. While I believe that the minister should have the authority to fund or not fund—and that would be a new provision, because right now the minister is restricted as to the conditions under which he cannot fund—I don't believe that as a condition of funding the minister should be able to micromanage and direct the hospital services. That's the intention of the motion, to respond to the legitimate concern of the Ontario Hospital Association.

Also, I have a quote here from Premier Harris when he answered the Ontario Hospital Association questionnaire about his party's policies on health. I'm not going to get into all the ones we've heard already, but there is a new one. This was the PC response to the OHA 1995 campaign questionnaire. He says: "A Harris government will not micromanage the health care system but is committed to ensuring that efficiencies and cost savings are identified so that resources can be reinvested in the front lines," and so on and so forth.

They made a very specific commitment not to micromanage, and this amendment is one step. There will also be other amendments forthcoming, but I think it is important that we start putting some restrictions in place so the minister cannot micromanage the system. We know there are many ways that can be done in this bill.

Mrs Johns: Subsection 5(2) of the act gives the power to the minister to set terms and conditions on grants,

loans and financial assistance. The limitation being put on in this motion would cause us great concern. One of the terms and conditions a minister could put on would be that there needed to be an annual operating budget they would stay within, and if we weren't allowed to put those terms and conditions on and restrict the administration to follow through, we wouldn't have the control we need for the taxpayers of Ontario. We will oppose this motion.

Mrs McLeod: I would like the parliamentary assistant to clarify in what way there are any limitations on the Minister of Health's ability now to control the dollars and therefore the total operating expenditures of any hospital in this province.

Mrs Johns: Maybe I didn't express it clearly. We can put a term and condition on a grant, for example, that they have to meet an operating budget. In your amendment it says "shall not restrict the administrator or the board in the management or operation of a hospital...." We may well want to restrict them to follow an operating budget. If they had money left over—here's another example of what could possibly happen—they may be able to transfer surplus funds into a foundation account as opposed to keeping it within the operating funds of the hospital. We're concerned about that and we want to make sure we have that ability to control the terms and conditions and to make sure they're enforced.

Ms Lankin: Again I find myself amazed at some of the interpretations we are receiving. Ms Johns, if you look to the amendments you are making to the Public Hospitals Act as part of Bill 26, under subsection 5(3), "Security for payment," you have the ability to require the repayment of funds; if you believe there are surpluses, you have the ability to do that. Under sub (4) you can lower the amount of the grant or "withhold payment in whole or in part of any grant, loan or financial assistance with respect to a hospital if the minister considers it in the public interest to do so." You have every control at your fingertips.

All this amendment is saying is that we're going to let the minister step in here, and in a whole lot of other sections of this act which will we come to, and take over the micromanagement of a hospital. That is not the intent here. If the minister is so concerned about what's going on in the hospital, we know—and we'll come to sections like section 8 where he has the ability to appoint a supervisor to completely take over the day-to-day operation. If the grounds are so severe that he has the belief he can exercise the powers under that section—there's very little limitation on him there other than public scrutiny when he does it—then he has that power.

What we're suggesting in this section of the act with respect to varying the amounts of loans and grants and those sorts of things is that the conditions you place on the moneys when you give those moneys forward be related to the use of the moneys and not to the individual terms and conditions of how a management of a hospital is undertaken by the board or by the CEO of the hospital.

You can't micromanage the health care system the way this bill suggests you will. People need to have some assurance that there are protections against a minister stepping in. Believe me, there are times from time to time when folks in the hospital branch, for example, of the

Ministry of Health would like to be able to step in and micromanage, and there shouldn't be that ability.

This amendment simply puts a limit on the conditions you can attach to the money. It doesn't change 5(3), which allows you to have ability to secure repayment. It doesn't change 5(4), which allows you to withhold or lower or vary the amounts, if you think it's in the public interest. You still have all those powers. If they won't give you an operating budget, you can withhold your grant. All the things you said you need to be able to do, you still can accomplish. This simply puts limits on the nature of the conditions you can place on it, to prohibit you from micromanaging the hospital.

Mrs Johns: I'd like to ask the ministry staff to respond to this, because we seem to be at odds here, and see what implications there are for this so that we all understand them.

Mr Peter Finkle: There may be elements here of a technical nature which Carole can jump in and clarify, but in terms of setting terms and conditions, which I think 5(2) in the act—the change anyway—addresses, we have in place now an annual operating plan process where we have policy regarding that. The approval of those operating plans is fundamental to the operation of a hospital and gives us some comfort that there's a range of services that the hospital's going to provide for the funding that's delivered. We still intend to fund hospitals on a global basis, and that's a term and condition which we apply right now by policy, which may be an example.

1500

We have a lot of volume-based provincial programs, cardiovascular surgery, dialysis, lens implant programs, where we have for years been funding hospitals to provide a specified volume. That's a term and condition on that funding. They cannot reallocate that funding to other activities of the hospital, and we make year-end adjustments on that.

They're also to allow certain policies to be implemented that are currently under discussion and development, rates-based funding being the most significant one through the joint policy and planning committee process with the Ontario hospitals. That's still in the very early stages of development and it may require some terms and conditions around it.

Also, there's a lot in restructuring that's not micro-management per se, but it's a lot of movement of programs between hospitals. There may be terms and conditions that are required to facilitate that process and to be fair to the physicians and employees associated with those programs, because quality in patient care is very important in making restructuring work effectively. Other than that, Carole, is there—

Ms Lankin: Peter, the problem I'm having—I understand you're just explaining the technical aspects of this and can't provide defence for it, but once again the answer I just got is that virtually everything you said up until the last point you have the ability to do under this amendment, because this amendment talks about the financial assistance, the conditions that it be dedicated to the provisions of specified hospital services.

All the issues that you raised with respect to the volumes of service, the nature of the services, the types

of the services, that's all there. The only one that you contemplated as something that might happen in the future, you're not exactly sure what the terms and conditions would be. So once again this is a blank cheque the government is asking us to sign, because you're not telling us what those terms and conditions might be.

Presumably if you thought there was going to be some kind of workforce adjustment plan that you were looking at, you could withhold payment of funds if you thought it was in the public interest if that wasn't lived up to, but it should be the hospital that determines what the elements of the workforce adjustment plan are, or there's a provincial agreement and then everyone's in agreement anyway.

I continue to have a problem when the answers that we get almost universally either are already powers that exist in the current system or are for unknown needs in the future. You can't answer this. I'm sorry, I shouldn't put you on the spot. Ms Johns, let me say again that that's not an appropriate legislative process or use of legislative power, to write yourself a blank cheque for the future.

Mrs Caplan: Am I up finally? Actually, I'm very concerned about what I've heard, both from Peter, who I know well, and from the parliamentary assistant. Because I think your intention, as the bill stands right now, one, is a threat to voluntary governance, and that is because of the powers it will give to ministry bureaucrats who really would like to be able to interfere in a more direct way in what's happening in the day-to-day management of hospitals. Two, I think many of the things you referred to, Peter, are already happening today, so you don't need the powers of this new legislation to be able to do them.

If my memory serves me well, we implemented equity formula funding that had been negotiated and discussed without these powers. It was done under the existing Public Hospitals Act through consultation with the Ontario Hospital Association. I support rates-based funding. I think it can be done in exactly the same way that equity funding was put into place. I don't think you need these powers for anything other than unwarranted intrusion and possibly micromanagement.

What concerns me is exactly what Ms Johns just said when she gave her answer as how this could be used. Her answer said this could be used where hospitals have a surplus at the end of the year, so the ministry could take that away. That runs contrary—

Mrs Johns: And put into a foundation.

Mrs Caplan: And put into a foundation. It would stop hospitals putting surpluses into a foundation. I see the legal counsel is nodding and saying, "Right." Well, the principles of quality management are not that you say to everybody, "We're going to penalize you if you manage well and have a few dollars extra left over that you're going to put into your foundation which the next year you can draw on to fund a piece of equipment or fund something that your hospital is going to need without having to come to the ministry cap in hand." The principles of quality management in fact allow reserve funds to be established should there be a surplus.

But I'll tell you, I don't think, given the fact that you're taking \$1.3 billion out of the hospitals of this

province, that very many of them are going to have the problem of surpluses. Your worry that they're going to scoop those surpluses and stick them into their foundations and use them for something that you don't approve of sends a chill, an absolute chill, to voluntary governance and to the people who work so hard to run the hospitals of this province. Because that's an attitude problem. It says: "We don't trust you. We don't think you have the interests of your community at heart, and in fact we want to be able to get in there and micromanage."

There are sufficient powers in the existing Public Hospitals Act to be able to fund the hospitals. This new power in Bill 26, without my amendment, has raised fears in the hospital community as expressed on their behalf by the Ontario Hospital Association and echoed by every one of the presentations here about the ability of the ministry to begin micromanagement.

This amendment scopes that. It doesn't take away your ability to fund. It doesn't even take away—let me read again what this says. The limitation on your right under Bill 26 is that, "A condition imposed under subsection (2) shall not restrict the administrator or the board in the management or operation of a hospital but may require that the grant, loan or financial assistance be dedicated to the provision of specified hospital services."

That allows you to enter into whatever agreement you want with the hospital and then lets them manage it, the people on the front line. It says: "Ministry, we can make an agreement with you, but you cannot send in Peter or any of the other nice guys at the ministry to manage our hospital. If you have concerns about how we're managing it, you've got to send in an inspector or you can wipe it out and send in a supervisor. If you think we're being fiscally irresponsible, you have those powers under other sections of the Public Hospitals Act as it stands today." You can send an inspector in where you think that patient care is in jeopardy or where you think that a hospital board is acting irresponsibly. Then you send in your inspector. Under this act you can send in an inspector; in fact you don't even need an inspector, you can send in a supervisor immediately.

Your objection, if you do not pass this amendment, what you're saying is, "Watch out, our real agenda here is Ministry of Health control and the ability to micromanage." Clearly it runs contrary to everything you ever said, that your Premier promised during the election, to the Ontario Hospital Association, and if you do not support this amendment you're saying to the Ontario Hospital Association: "We heard you, but tough. We're worried about your hospital boards, the voluntary governance of this province. We don't trust them. We need to be able to micromanage those hospitals." Well, let me tell you something. You do that and you will destroy voluntary governance in this province.

Mrs McLeod: I think almost accidentally we start to find out in the responses what some of the intent of the government is. Let me be sure I have clearly understood the answer of the parliamentary assistant as to why this incredible section of this bill is necessary and can't be amended even in this very simple way that we've proposed.

The section of the bill that we're concerned about does give the power to the Minister of Health, as my colleague has said, to step in and essentially take over the day-to-day management of a hospital—incredible power to have. The ministry people have made it absolutely clear that currently the Minister of Health and the ministry determine how much money a hospital gets. They can set terms and conditions on how that money is used.

Our amendment doesn't restrict that power in any way at all; in fact it says clearly that terms and conditions can be set out. The only thing our amendment does is say the Minister of Health can't step in and take over the management of the board, and in future parts of the act, as you know, there are places where, if there is mismanagement, the Minister of Health has powers to be able to step in. But just in terms of the allocation of dollars and how the dollars are spent, the Minister of Health does not need the power to actually manage the board on a day-to-day basis.

1510

Let me understand your answer as to why we can't make that clear. You've said there's a danger that hospitals might have money left over in their operating budget at the end of the year that could be put into a foundation. I raise the question because I think it is a serious concern about your view of voluntary governance.

My understanding of what voluntary boards of governors, people who are volunteers—that's what "voluntary" means—try and do is look at what their hospital needs, look at what people in their community need, try and take the dollars that are given them by the Minister of Health and stretch them to be able to meet the needs in their community. If they feel the dollars aren't going far enough, they make application, as the ministry representative has said, for additional funding and sometimes that's granted and sometimes it's not. It's totally under the control of the Minister of Health.

Are you telling me that there is such a danger in the way the Ministry of Health gives money to hospitals that some hospitals are struggling for funds to meet their goals and other hospitals have extra money that they're going to be able to put into a foundation? And if you've mismanaged the allocation of dollars to the hospital so badly that this would actually occur, when the dollars are restrained everywhere, you want the Minister of Health then to be able to step in and manage the hospital so they don't put the money into a foundation? Is that what you've told us today?

Mrs Johns: We're not suggesting we want the minister to step in and manage the system. What we're objecting to in this is "shall not restrict the administrator or the board in the management or operation" of the firm. These are terms and conditions we're setting to the granting of taxpayers' money. We're saying that in some cases we may have to restrict what they do with it. We're not micromanaging; we're saying there may be restrictions on this money.

Mrs McLeod: Our amendment says that: The minister can set terms and conditions but in exercising those terms and conditions shall not restrict the ability of the board to manage.

Mrs Johns: We want to be able to restrict the—

Ms Lankin: It's on the record now.

Mrs Johns: Yes, and I might have got that backwards too. I'm sorry about that. In some cases we need to have control over how the money is being put in. We need to be able to say that money has to be used for operations.

Mrs McLeod: Ms Johns, you have those powers now. What else do you need?

Mrs Caplan: I would like Ms Johns to read the amendment into the record, slowly. Just read the part that starts "Limitation."

Mrs Johns: It's already read into the record.

Mrs Caplan: I read it. Would you read it, please?

Mrs Johns: I've read it, thank you.

The Chair: Mrs Caplan, it wasn't your turn; it was Ms Lankin's turn if Mrs McLeod is finished.

Mrs McLeod: Let me put Ms Lankin's question again, because I think that was why Ms Johns called on a representative of the ministry. As I recall, it was: What is the limitation now on the Minister of Health in order to be able to manage the total dollars to the hospital—I'm paraphrasing you, Ms Lankin; please don't hesitate to correct it—and what limits the ability of the Minister of Health to set terms and conditions, and why does he further need the powers that are set out in Bill 26? What are you trying to do with this?

Mrs Johns: We're trying to make sure that the money we give to hospitals is being given for uses that are needed. We're trying to make sure that the taxpayers' money is being best utilized within the system.

Mrs McLeod: You can do that now, Ms Johns. I'm asking, what do you need Bill 26 for, and why isn't this amendment adequate to ensure that you have those powers unrestricted except for the ability of the Minister of Health to take over the management of the hospital?

Mrs Johns: I think we're at an impasse, so I'll ask the legal counsel to talk.

Mrs McLeod: That's actually where we started, at an impasse.

Ms Carole McKeogh: I'm Carole McKeogh from the Ministry of Health legal branch. The current provision in the act states that the minister may pay provincial aid to hospitals in such amount, in such manner and at such times as the regulations prescribe. So there are only three things you can deal with in the current act: amounts, manner and times. I think the intent here of this wording is to permit the imposition of additional terms and conditions which would be more than amounts, manner and times; different types of terms and conditions.

Mrs McLeod: Can you tell me what else is left besides amounts, manners and times? It's a fair public question. Volunteer members of boards of governors are saying, "What is it you plan to do to us if you thought you needed the power to do it, which is what Bill 26 gives you?"

Ms McKeogh: When we were working on this section, the program area indicated to us that, for example, the requirement for operating plans currently in place is purely a policy requirement. There is no legal authority to require annual operating plans, because they're not amounts, manner or times of payment.

Mrs McLeod: I think the requirement is that the dollars don't come unless you give us an operating plan.

It's pretty straightforward: He who pays the piper calls the tune.

Ms Lankin: I didn't quite get the gist of your answer, because in a sense it's consistent with what we heard earlier. The only example we're being given is operating plans. Under subsection 5(1), payment to hospitals, "The minister may pay any grant, make any loan and provide any financial assistance to a hospital if the minister considers it in the public interest to do so."

If I were the Minister of Health and a hospital refused to give me an operating plan, I may think, then, it's not in the public interest to give them any grant or loan or financial assistance. Isn't it possible I would interpret that requirement for an operating plan as something that would be in the public interest before I gave money?

Ms McKeogh: Other examples would be—

Ms Lankin: We didn't get an answer to that on the record. I'm sorry. You answered me but it wasn't on the record. But the answer is yes?

Ms McKeogh: You could withhold payment under subsection 5(1).

Ms Lankin: So you don't need to be fearful of the limitation being put under subsection 5(2) on terms and conditions in order to get your operating plans. You do have other mechanisms under subsection 5(1) to get the operating plan from the hospital.

Ms McKeogh: The mechanism in subsection 5(1) would be to withhold payment of the grant.

Ms Lankin: That's a pretty big term and condition: You don't get your money unless you give us an operating plan.

Let me talk to the members of the committee here and ask you to think this through. I don't think you really believe in the micromanagement of the hospital system. But put together the kind of language you have in section 5, together with the language in section 8, which is the appointment of supervisors, where you can now appoint supervisors after 14 days' notice without any due process. You don't have to put an investigator in first. You don't have to listen to the report of the investigator. You don't have to give the hospital any hearing. While you're putting an amendment in and giving them 14 days' notice, there's no process for hearing the hospital's response to that.

You've changed the language so that in the past, where the voluntary governance—the hundreds of volunteers who run our hospital system in our communities, who have the day-to-day operations on their plate in terms of the running of hospitals, where they would in the past, if it was under a supervisor, have to check major decisions with a supervisor, you've even taken that away and you've said the supervisor can take over the day-to-day operations of the hospital, totally undermining all those hundreds and hundreds of volunteers.

You didn't put any sunset on those powers. Those powers are going to be there forever. You've sunsetted section 6, the powers to merge and close. You've sunsetted the commission. You didn't sunset the extraordinary powers of the supervisor. Particularly for those members who were not on the health section, may I tell you, when your minister appeared before our committee on the very first day of hearings, he went to great lengths to tell us

that the existing section dealing with supervisors had hardly ever been used in the history of the province. He said maybe only a couple of times. When I asked him why he wanted even greater powers then, he couldn't answer that question. There was no answer to that question.

Yet you've put in place a whole series of amendments to the existing legislation under Bill 26 which allow the ministry departments to step in and take over the running of hospitals and totally undermine the volunteers who run our hospital system. If I were Jim Wilson, I could be much more eloquent about governments taking over the role of volunteers and destroying volunteerism in our communities. He's pretty good on that issue, let me tell you. I know.

Look at what you're doing. The amendment that's here is simply saying, if you're going to put terms and conditions on the money that's coming in, relate it to the services that you want the hospital to provide and not the day-to-day management issues. You have all sorts of other mechanisms to get at day-to-day management and to either negotiate agreements or to influence or, if you think there are problems, to send in an inspector or a supervisor or whatever. You don't need, in every section of the act, to have the power to step in and run things, which is what you're doing by this section.

1520

Again, if in fact it's not your intent every step of the way to undermine the role of legitimate volunteers, hard-working volunteers in our communities, who are dedicating their time and energy to helping run the hospital system of this province and delivering health care in this province, if it's not your intent to be able to undermine them at the whim of the ministry or the minister, then listen to the recommendations that you're hearing from Mrs Caplan, a former Health minister, saying: "Limit that power. Put some limits on it."

Every argument we hear back from you is that you want unlimited flexibility, to use some words that were being bandied around earlier. Again, I suggest to you that's not good legislation. Governments need to have limits placed on their own powers, and in this case, you need to have limits placed on you in terms of how far you're going to go to undermine the work and dedication of volunteers in the province of Ontario.

Mr Clement: Can I just ask the legal counsel, firstly, when was section 5 originally part of the legislation? How many decades does that go back?

Ms McKeogh: Probably 1931.

Mr Clement: Thank you, 1931. I'd like to speak to this, because I think there's an important point that has to be made, that section 5 of the Public Hospitals Act is a very archaic device for 1996. Here we are in 1996. We're dealing with legislation that was created for the times in 1930, 1931. I see nothing wrong—

Mr Cooke: You remember it well.

Mr Clement: In a former life. I'm still paying for the sins of that life, Mr Cooke.

Ms Lankin: Until the next time, Tony. It's going to be even worse.

Mr Clement: Yes, I think so.

Mr Sampson: You'll come out as a patch of grass or something.

Mr Clement: Yes, I might be an NDP supporter or something in the next life. We'll see what happens.

Mr Cooke: You mean to tell me the Almighty has made this mistake twice?

Mr Clement: No, no. He's infallible; I'm not.

Getting back to the issue at hand, if I can, I look at the sections found in Bill 26 and compare it to the Public Hospitals Act. The language is archaic. We're talking about public money here and how that money is spent. I see nothing wrong, when we are the custodians of the taxpayers' dollar that is going into the system, to impose, if necessary, some terms and conditions on how that money is spent. Maybe that's a 1996 concept. In 1930-31, maybe it wasn't such an issue, but it certainly is an issue in 1996.

We have a responsibility to the taxpayers and to the public to make sure that their money is spent wisely and, quite frankly, at the other end, at the output end, we have a responsibility to Ontarians, all of whom at some point in their lives are going to be in the health care system, to ensure that we have properly run hospitals, allocating the resources in the first instance as they determine them, but we've got to have some accountability in this.

I hope I'm not speaking out of turn. I mean no disrespect to the former government, but we're getting this lecture on volunteerism. That was a government that enacted Bill 173 on long-term care that gutted volunteerism in a very important area that touches on the health care issue. We had Mr Kormos in Niagara Falls standing up talking about electing the boards of hospitals, for gosh sakes. What does that say to the volunteer? That somebody can go to a meeting or go to a ballot box and blow away the volunteer? Is that where that's coming from? Is that what's coming from the NDP?

Mr Sampson: The future leader of that party.

Mr Clement: A future leader of the party saying that. I know Ms Lankin wants to defend Mr Kormos, but in all seriousness—

Mr Cooke: You don't like elected hospital boards?

Mr Clement: Read the record. In all seriousness, I think that we need a law respecting public hospitals that does give the government of Ontario, the custodian of the taxpayers' dollar, some level of authority to make sure that dollar is accountable when it is spent by the hospitals, and so I would support the section as it stands now.

Mr Cooke: I found part of this discussion interesting. You know, nobody can disagree with what Mr Clement just said. I think the debate is whether or not there are already sufficient powers within the acts and whether this is going that one additional step that's not required. But I think what we've seen is an explanation from legal counsel, Ms McKeogh, where the comment was, "When we sat down to draft this section, the program people said, 'We'd like to have this power.'" That's fine for people in ministries to make those judgements. They make those judgements and recommendations all of the time. That's appropriate. What is appropriate for the elected people and the minister and then the Legislature is to say whether that recommendation, whether that additional power coming to the ministry, to the bureau-

cracy is an appropriate power or whether the existing powers are quite adequate to protect the public purse.

When we had the second reading debate on this bill, I believe there was a very good argument put forward by my leader, who said that there's always going to be a tendency within a large bureaucracy, in the public sector or the private sector, to try to accumulate more power and control over the system within the ministry. That's exactly what's happened here, and it's been confirmed that that's exactly what happened. This isn't being driven by politicians, by the publicly accountable people; this is being driven by the ministry. It's not a necessary power. It's not something that the political process has approved. It's something that somebody said when they were putting Bill 26 together: "Hell, we've got an omnibus bill. We're going to be centralizing more power." The people in the ministry, the program people said: "We'd like to get this additional power. It's probably been raised with previous ministers and been rejected, but let's do it. We've got this huge bill going forward and we'll take this additional power unto ourselves."

Here we are, and now we've got a rationale being made up by the politicians on the government side to justify something that they know darn well they would never justify in any other previous life. So I think this afternoon's debate and the comments by the elected people and the non-elected people are very illuminating, and not just on this section but on this entire bloody mess.

Mrs Caplan: I will try to be brief. I don't agree with all of what Mr Clement had to say, because I think there needs to be update in laws from time to time. In fact, we're not saying, "Strike out section 5." We're supportive of section 5, which would update the funding powers of the minister. We've agreed that those have to be updated. All we're saying is, impose a limitation that doesn't allow the minister to go in and interfere with the day-to-day operations of the hospital or administration as it relates to the work of the hospital board and the administration of the hospital. That's micromanagement. That's the only limitation we are placing on the updated funding ability of the minister.

Frankly, I can understand the program branch wanting this and I can also understand why the Ontario Hospital Association and every hospital hates this. The hospitals hate this because this means potential micromanagement by program branch staff in the ministry. If this is in place, they can walk into any hospital and they can restrict the administrator or the board of management on the operation of that hospital. That's micromanagement. Why anyone in their right mind would want to sit on a hospital board as a volunteer, knowing that at any time someone from the ministry could come in and interfere with the day-to-day operations of that hospital, beats me. That's where it will undermine volunteer governance. This is exactly what the Ontario Hospital Association was referring to. The case analysis, both from Mr Clement as well as Mrs Johns, portrays a lack of trust of that voluntary governance.

1530

The Public Hospitals Act already permits, where a minister has concern about that governance or the

administration of that hospital, action to be taken. Bill 26 enhances those powers dramatically. Where you are worried that board is not acting in an appropriate way, you can send in a supervisor and direct the board, if it's serious.

But on the basis of your funding power and the need to update that old, archaic law, surely a reasonable limitation that does not give total and absolute control to the minister, and thereby well-meaning ministry bureaucrats—sometimes maybe not so well-meaning—to be able to go in, who knows? You know, sometimes there are personality conflicts and tensions and so forth that occur.

This is a very reasonable limitation on that funding power, and if you don't support it, then your message to every hospital board, to every hospital administrator, to the Ontario Hospital Association is (1) you don't trust them and (2) they'd better not trust you. That lack of mutual trust will undermine everything that we believe in and it will undermine voluntary governance.

Think about it before you vote against this. You all have hospitals in your local communities. Do you want somebody from the ministry to be able to come in and direct your administrator on the day-to-day operation of that hospital? Do you want them to be able to come in and direct the board on the day-to-day operation of the hospital, or do you want them to be required to sit down and negotiate any problems that they might have? If you can't come to a mutual and satisfactory agreement following those cooperative negotiations, you've got Bill 26 and you can send in a supervisor and you can have your way.

But this limitation that we're trying to put into section 6 simply requires those negotiations when it comes to the day-to-day operation of the hospital and it limits the ministry's ability to micromanage. Think of all those hospitals in the local communities. Do they want a bureaucrat from Queen's Park coming in and telling them how they have to manage the day-to-day operation of their hospitals? Do you want that in your communities? If you do, then you vote against this amendment. If you don't, if you don't think that the ministry should be able to micromanage and if you support what Mike Harris said, and if you heard the concerns of the Ontario Hospital Association, you'll support this amendment. It'll do everything you want, Mr Clement, but it will stop the program branch, which wants this, from being able to come in and micromanage. That's what it will do.

Ms Lankin: I agree with Mrs Caplan's explanation of what her amendment would accomplish and with the reasons to support it, and I also agree with Mr Cooke's version of how this bill got drafted. I think we've seen time and time again that there is much truth to that scenario.

I have only one point I want to address and it's very directly in response to Mr Clement's comments, and I am so glad that he finally understood the parallel that I have been making as I have been arguing about voluntary governance. You brought up the long-term care legislation, because that's exactly why I've been making this point. I appreciate your opening the floor in the debate on that so that I can make the point even clearer to you.

I'd like you to take a look at what in fact the previous government was doing with respect to that legislation and the delivery of community services to seniors who are living in their homes, who are in receipt of long-term care services in the community. That legislation provided for the creation of an agency called the multiservice agency, which essentially was a merger of all of the different community agencies currently delivering.

You might argue, in your fiscal terms, merger and closure so that you could have more fiscal efficiency. You might argue that was rationalization of services. You might argue a lot of things. In fact, I suspect, given all the powers you've given yourselves, you'll be doing it in lots of areas, but you won't be as explicit in setting it out in the legislation as the previous government was.

In any event, what it did was it merged a lot of community agencies delivering a similar nature of services to seniors into one agency. And do you know what? It maintained volunteer boards for that agency. They still had volunteer boards.

But it is very true that your now Minister of Health went across this province and told everyone that that was the gutting of volunteerism in this province, that that would destroy volunteerism in the health care sector. Those were his words. They were very extreme. I think very rhetorical, but they were very extreme words.

That was just merger of community agencies that would still have a community board. But instead of five agencies and duplication of services, it would be brought into one agency. Instead of five boards, there would be one board, hopefully ways of maintaining all those volunteers. But that was going to gut volunteerism.

Now let's look at what you're doing in this bill. You now have a section in which you're going to put terms and conditions on any financial grants that you make to the hospital, which allows you to actually restrict—in the words of the parliamentary assistant: "We want to be able to restrict the day-to-day operations. We want to be able to have that power" to essentially micromanage—she didn't use those words, those are my words—the hospital system out from underneath the voluntary board. You have the ability to send in a supervisor, without any due process, to take over the operation of the hospital from that voluntary board. You, by the way, give yourself the powers we know to merge and close hospitals irrespective of what the voluntary board wants you to do.

If you want to talk about undermining volunteerism in this province, please take a look at what your bill does and what you will be accomplishing and the way in which you are saying you don't trust volunteers in the system. It is absolutely appalling that you could even attempt to make the comparison to Bill 173. It took me long enough to goad you into it. I've been trying for a couple of days here and you finally did.

Mr Sampson: Well done.

Ms Lankin: Take a look, just take a look: For anyone out there who understands what the Conservative Party railed against as the end of volunteerism in this province, the merger of some community agencies still under a volunteer board—that was the end of volunteerism—to a bill that allows the minister to close any hospital he wants, merge any hospital he wants over the objection of

any hospital board; that allows him to set up a restructuring commission and gives him the powers to go in and do anything he wants over the work of volunteer district health councils and not listen to them; that allows him to send in a supervisor to take over the day-to-day operation of the hospital and pull the rug out from underneath the volunteer boards; and in this section, a government that won't even allow a slight limitation on the language that says the terms and conditions have to be related to the services, as opposed to restricting the day-to-day operations of the decision-making of the board. And you want to say that other people were gutting volunteerism?

Look. Look at your bill. Look at what you're doing. Look at the message that you're sending to the hundreds and hundreds of volunteers in this province. Bill 173 pales in comparison to what this Conservative government is doing and it runs absolutely contrary to everything you ever said you stood for.

I believe Mr Cooke's scenario and I believe Ms McKeogh, who said it very accurately. This is a desire of the program branch, and you're now trying to defend it with lovely flowery language. It would be very interesting to know—a surprised look from a couple of members—if you believe that Mr Wilson actually said to the people in the ministry who were drafting this bill, "I need this power and I want this power to put terms and conditions on the grants and the loans so that I can restrict the day-to-day operation of the hospital around the wishes and desires of the perhaps democratically elected hospital board"—because we do have elected hospital boards in this province, Mr Clement; you might acknowledge that there's a mixed system out there—"or the hospital board that has been just brought together from the membership of the hospital corporation."

If you believe Mr Wilson gave that direction, I suggest you continue to defend this. Otherwise, you should perhaps take a second look at it, because all you're doing at this point is giving in to the wishes of the department that had put forward a wish list. You are voting to undermine voluntary governance in this province and you are putting together a string of amendments that will indeed gut volunteerism in the hospital sector in the province.

Mr Bart Maves (Niagara Falls): I'll be very brief, not being a former Minister of Health. As I look at the amendment, the limitation is that the government may require that a grant, loan or financial assistance be dedicated to the provision of specified hospital services. My fear, and admittedly it may be unwarranted, becomes that if translated literally, the amendment might preclude the government from giving grants, loans or financial assistance to hospitals for the purpose, for instance, of purchasing equipment and things like that. It may be an unwarranted fear, I admit, but if translated literally, that's something that comes to my mind. I just wanted to put that out there.

Mrs Ecker: I'm having some difficulty understanding why our friends from the NDP are having difficulty with this particular phrase in this legislation. If the bureaucrats are supposed to have pulled one over on us in 26, they certainly pulled one over on the former government in Bill 173, long-term care, which has an identical section

in it, with terms and conditions on grants and terms and conditions imposed on funding.

Ms Lankin: That's the legislation you said gutted volunteerism, remember?

Mrs Ecker: I have the floor, Ms Lankin, please. What our esteemed Health minister was talking about, and I can go by the numbers of individuals who talked to me from agencies out there in the long-term-care field, wasn't that the terms and conditions on the funding were the problem. As Mr Clement has said, as the people who are the custodians of the taxpayers' money, I don't object to amendments in legislation that are going to help us have better control of taxpayers' money. What we objected to, Ms Lankin, was that they were going to restrict the powers of the volunteers on the board, they were going to restrict who they could hire. I heard from a lot of individuals out there doing the Meals on Wheels and all those other programs who were terrified about what was going to happen under long-term care to their volunteer efforts. It had nothing to do with the restrictions on the funding.

Mrs Caplan: I think Mr Maves raises a good question. As a former Minister of Health, I'll tell you that when the Ministry of Health and the minister decide to give money to hospitals, whether it is for capital or operating, it's for the provision of services to the community from that hospital. I don't think you need have any concern that the restriction or limitation I am proposing would in any way restrict services. They could provide capital for equipment so that they could then provide service. They could provide capital for a building, the purpose of which is to provide services. It would not be a problem.

The Chair: Is there any further discussion on the amendment proposed by the Liberals? Seeing none, shall the amendment pass?

Ayes

Caplan, Lankin, McLeod, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

Since this is a convenient break in the action, we will take our 15-minute recess for the afternoon.

The committee recessed from 1543 to 1601.

The Chair: Welcome back. In case anybody's lost track, we are more than halfway through our time. I had to throw that in—just a little levity.

Ms Lankin: Mr Chair, I have a query and I'm not sure whether Ms Johns can answer it for me—a couple of questions. First, are there further amendments to the health schedules that you will be tabling with us this afternoon or tomorrow morning?

Mrs Johns: It's a possibility. I'm sorry, I don't really know, yes or no, or what the holdup is. I guess we're looking at a few.

Ms Lankin: Could you give us some sense of the number of those?

Mrs Johns: Three.

Ms Lankin: Specifically, this morning in the newspaper, I saw a reference to an amendment the minister

said he was working on with respect to CMPA. I found it interesting that he was being quoted. You haven't seen that one and you don't know whether or not we'll see that amendment.

What about with respect to the medical review committee process? Are there amendments coming with respect to that?

Mrs Johns: I think the practitioner, chiropractor issue is one you will see, what we've been talking about. That's the only one I know of at this particular point, but I understand there'll be two more.

Ms Lankin: Perhaps, if more information becomes available before the end of the day, you could share that with us. Mr Chair, we are moving our way slowly through the health sections, but I am informed that there are several areas where the government is contemplating tabling amendments to their amendments. I know the one area around "practitioner" that we've talked about, but there are some other areas. I'd like to know whether that's the case, because I find myself not sure whether to react to the amendment I have in front of me with respect to the positions I take on amendments we table, or whether to hold off and wait, because I've been informed that there are other amendments coming to these amendments in other areas.

As you just said, Mr Chair, we're more than halfway through the time. By the end of today there will be one and a half days left to debate amendments, and tomorrow is the last time they can be tabled. Is that correct?

The Chair: Tomorrow at 4 is the deadline for tabling of amendments.

Ms Lankin: I'm quite concerned about a situation where in the last two days—we're going to be receiving more amendments to amendments that aren't being fully discussed with us or shared with us in advance in any way so we can have an appropriate response. It really is driving it right down to the wire. I just plead for a little better process, as bad as this has been all along. Don't leave it right to the last, on the last day for amendments, to table your amendments.

Mr Phillips: Was that a question to the government? Are they actually planning more amendments, or have we got the final amendments?

Mrs Johns: I said that in health I know of at least one more amendment, the one we were talking about earlier in the week with the chiropractor versus the doctor situation. That amendment is coming. That's the one I know of.

Mr Phillips: I'm aware of another one, I think, where we need all-party agreement to have it tabled, so that would be the second one, I guess.

Mrs Caplan: I'm assuming it's not going to just deal with chiropractors but will deal with dentists and podiatrists and all of the other—

The Chair: Mrs Caplan, let's not get into talking about an amendment that might come forward.

Mr Phillips: I gather we're talking one or two amendments, not 10.

Mr Clement: Not a whole forest.

Ms Lankin: I'm glad it's not going to be a whole forest. That's helpful.

I appreciate your confirmation that an amendment dealing with the amendment to Bill 26 that you tabled

that caused a problem with respect to practitioners and OHIP billings and review of such will be forthcoming. Would you please undertake to inform me by the end of the day, if you can, whether there are amendments to any other section of the health bills that will be coming forward? That's quite important for us to know. Some of us actually were expecting some other amendments, and I'm surprised that you're indicating they may not be coming forward. I'd like to know that by the end of the day.

The Chair: The next amendment we will be dealing with is to section 6, and it's a Liberal amendment.

Mrs Caplan: This is a significant amendment that, from what I have heard, the government will likely not accept, but I hope they will because it's very important. Let me just read it and then give you a very short rationale for it.

I move that subsection 5(4) of the Public Hospitals Act, as set out in section 6 of schedule F to the bill, be struck out and the following substituted:

"Reduce or terminate grants

"(4) Upon the recommendation of a district health council, the minister may reduce the amount of any grant, loan or financial assistance, may suspend or terminate any grant, loan or financial assistance or may withhold payment in whole or in part of any grant, loan or financial assistance with respect to a hospital located in the jurisdiction of the district health council.

"Notice of reduction or termination

"(5) The minister shall give a board notice of a decision to reduce, terminate or withhold the payment of all or part of any grant, loan or financial assistance at least 30 days before the decision takes effect.

"Content of notice

"(6) A notice of a decision shall state the reasons for the decision and shall inform the board that it is entitled to submit a notice of objection to the decision to the minister within 10 days of the receipt by the board of the notice of the decision.

"Right to object

"(7) Within 10 days of the receipt of a notice of a decision, a board may submit a notice of objection to the decision to the minister which shall set out the reasons for the board's objection.

"Response by minister

"(8) Within 10 days of receipt of a notice of objection under subsection (7), the minister shall give the board a written response which shall either confirm or revoke the decision and give written reasons therefor."

This deals with the rights that hospitals and hospital boards must have in relation to the reduction of financial assistance by the Minister of Health. Our amendments have to do with restructuring. It says there has to be some due process and some natural justice, all of which is missing from the legislation. Our amendments say that for the purposes of restructuring, reduction in financial assistance by the Minister of Health can only be done when it's recommended by a district health council, where the hospital has received 30 days' notice, where the hospital has been given written reasons, and it adds that the hospital is entitled to object within 10 days. It also says the minister must respond with written reasons

either confirming or revoking original notices.

We know that what this act is going to be doing when it comes to restructuring is shifting funding and moving services around. We believe that before the minister should have the absolute and uncontrolled powers to be able to do that, there should be some process: The local district health council should be involved and have made recommendation to the minister of the plan that's going to see services move around; the hospitals have to receive notice this is going to happen; if they are concerned about it, they have to be able to know they can have a hearing; and the minister has to provide reasons, even if the reason is "the restructuring of."

This is part of putting some terminology around "in the public interest." The minister right now can make any decision if he thinks it's in the public interest, and that's undefined.

1610

This puts in some process, some natural justice and some definition of what's in the public interest. Without that, the minister can do as he pleases, without any process, without any right of appeal, without any public hearings and without any reason. He doesn't even have to say why he's made that decision.

We think this is a reasonable amendment and we hope the government will support it, although I am not optimistic. Say I'm wrong, Mrs Johns. You're going to support this, right?

Mrs Johns: You shouldn't be optimistic. The government will not be supporting the amendment. Mrs Caplan probably explained why. In "Reduce or terminate grants," it's been suggested that we wait for a recommendation of the district health council before we reduce the amount of any grant. This has never been part of the policy before, so this is a serious problem for us in being able to operate the ministry on the day-to-day basis.

Never before has notice of a decision and notice of objection been required on day-to-day funding. That's a second issue within it. The ministry gives, in practice, reasonable notice about changes in funding, and we believe that that's all that's necessary.

Ms Lankin: Why is it that whenever you want to change something and there's an objection, you say, "We can't support the status quo," but when you don't want to change something, you say, "It's always been done this way and it's okay"? I don't quite understand your logic in your arguments.

Mrs Johns: We believe in this particular case that for the district health council to recommend a change in funding every time would be a very time-consuming, duplicative process, and we don't think that's in the best advantage to being able to provide funding to hospitals.

Ms Lankin: So in this case the status quo is best.

Mrs Johns: Is that a question?

Ms Lankin: Ms Johns, in this case, do you believe the status quo is best?

Mrs Johns: That's correct.

Ms Lankin: Thank you very much. I just want to make sure we've got that on the record so the next time you accuse someone of wanting to protect the status quo, we can show equally that where there is a good, rational reason to continue something that is working, a process

that is bringing about reasonable, considered reform of the health care system within a framework of principles that have been arrived at through consensus-building in the communities—we can point out that that's the status quo and not everything about the status quo is bad. I appreciate, on a serious note, having that on the record, because you have rhetorically used that comment in many circumstances in a way that really undermines the work that's been done by a lot of people to reform the health care system.

Mrs Johns: As you well know, we have had the discussion around this table a number of times that each one of the people at this table wants the best for health care in Ontario. No one's suggesting that one of us or another is better able to decide what's best for health care. We're all looking at ways that we could implement a good health care system for Ontarians.

Ms Lankin: If I thought that was the case and the position of the government members, I would be much more comforted.

Mrs Johns: You should be comfortable.

Ms Lankin: But all the recommendations being put forward by the opposition are being dismissed out of hand by you. Any time arguments are put forward, we hear catcalls about opposition defending the status quo. We hear a defence of your change because nothing was working in the health care system, nothing was changing. You know how many times I've taken exception to that, because a lot of good work is going on in communities to reform the health care system.

In any event, it was a political point to be made, and I've made the point.

Mr Phillips: Just so I'm clear, I gather that the minister makes this decision. What are the areas of public interest that he can consider here? How does the minister define "public interest" here?

Mrs Johns: The minister defines "public interest" under section 9.1, which we'll be coming up to. What it says is that he "may consider any matter they regard as relevant including, without limiting the generality of the foregoing,

"(a) the quality of the management and administration of a hospital;

"(b) the quality of the care and treatment of the patients in the hospital;

"(c) the proper management of the health care system in general; and

"(d) the availability of financial resources for the management of the health care system and for the delivery of health care services."

Mr Phillips: But I gather the intent is "or anything else he wants to consider." Is that right?

Mrs Johns: Considering "any matter they regard as relevant including...."

Mr Phillips: So those four things and anything else he wants to consider.

Mrs Johns: And "without limiting"; that's correct.

Mr Phillips: So whatever he wants to do, he can do, I gather. Is he required to publish his decision in the public interest? Is he required to give written explanation of how he reached—I keep using "he," but the Health minister.

Mrs Johns: Can you tell me under what section you're talking about?

Mr Phillips: I'm back under the section we're talking about—that is, reduce or terminate grants—and you're saying if the minister considers it in the public interest to do so.

Mrs Johns: No, he's not required to—

Mr Phillips: So he just does it, is never required to tell anybody why he did it, and it's unfettered in terms of how he can make the decision. Have I got that right?

Mrs Johns: As you know, the term "public interest" is used in many pieces of legislation. I don't think that a minister would use it unfettered. Is that your definition?

Mr Phillips: That's what I interpreted, that there is no definition of "public interest" here. The minister can just pretty much decide and never have to tell anybody. He just decides.

Mrs Johns: There is a definition of "public interest" which we've gone through in 9.1, but he doesn't have to outline the reasons why he's made a decision in the public interest. That's correct.

Mr Phillips: Your definition lists four things but says "and anything else." So it's the ultimate in openness.

Mrs Johns: That they regard as relevant. It can't be an irrelevant detail.

Mr Phillips: No wonder the public are worried. This truly essentially means the minister makes any decision he wants and doesn't have to tell anybody the basis on which he reached the decision.

Mrs Johns: It has to be in the public interest.

Mr Phillips: But he never has to tell anybody why he did that.

Mrs Johns: I'm sure there have been different challenges to make sure that ministers are using "in the public interest." I'd have to check that with legal counsel, because I'm just assuming that.

Mr Phillips: I gather that this decision can be taken to court, then.

Mrs Johns: Can it? Has public interest ever been tested in court?

Mr Phillips: No, this decision can be taken to court.

Ms McKeogh: We are on to a funding decision?

Mr Phillips: I think what you just said was that it can be challenged.

Mrs Johns: No. I said I think it must be able to be challenged. I'd like to get an opinion on that, though. I don't want to say something that's probably incorrect.

Mrs Caplan: Guess what?

Mr Phillips: I'll just wait here for that.

Mrs Johns: Is that incorrect? It has never been tested, "in the public interest"?

Mr Phillips: I'm waiting for an answer, that's all.

Ms McKeogh: It could be challenged on the basis, I believe, if the decision was made in bad faith.

Mr Phillips: So this can be challenged in the court.

Ms McKeogh: But on very limited grounds of bad faith and patently unreasonable.

Mr Phillips: Can you give me an example of when that's been done before? I gather that we're giving the minister essentially unlimited powers to make this decision. He may consider anything that he considers relevant. So it probably is a little difficult to challenge

him when the law says you can consider anything you want and then make the decision. Can you give us some help here how this would be challengeable?

Mr Cooke: What's an example of bad faith?

Ms McKeogh: I'm just relying on a Metropolitan General Hospital decision which dealt with a funding cut, a challenge to a funding cut by the Minister of Health. The court held in that case that the decision was not reviewable, that the expenditure of public funds was a policy decision entrusted in the minister. I believe this case mentioned grounds for review if there was bad faith or an unreasonable decision, but I'd need a minute to review the case to try to find that.

1620

Mr Phillips: The way I read this is that the minister can make the decision any way he wants. I'm wondering why you even want to put "in the public interest," because it seems that the scope is so far-ranging that he and he alone makes the determination of the public interest. I will await the answer.

Ms McKeogh: We have it here. The court report stated here: "He," meaning the minister, "cannot perhaps use a statute designed for one purpose for another, nor can he exercise his statutory power under extraneous or irrelevant considerations. But where his decisions are pursuant to and in the course of his duties to advise the government in the conduct of the affairs of the province, they are unimpeachable in the courts."

Mr Phillips: That gives me the answer that I expected. Thank you.

Mrs McLeod: This is an incredibly important issue, because the powers given under this act to the Minister of Health are sweeping, the powers given in this particular section are absolutely unprecedented, and when I hear the ministry's legal adviser indicate that under existing legislation there has been very little power to hold the minister accountable for decisions made, I would suggest that there is virtually no power for there to be any appeal of ministerial decisions made under this new legislation. It is so unfettered and so unchecked, as my colleague has said; there are no limits. There are very wide-sweeping factors that the minister can take into account, but as you've said, Ms Johns, he's not limited to that.

All that exists as a safeguard for the public's access to health care under this section of this act is the minister's consideration of the public good, the public interest. It seems to me that to be even suggested that he would be acting in bad faith, he'd almost have to stand on a rooftop and say, "I could care less about health care and that's why I'm doing this." Anything short of that, clearly he's going to say, "I'm acting in what I believe to be the public interest."

It's my understanding that under current legislation the Minister of Health is at least fettered or checked by having to act within regulations under the law, under the Public Hospitals Act, that that at least is a measure of check on his personal, individual judgement being exercised. This takes that away.

I agree with the statement you just made that no one alone can decide what is in the best interests of health care. I would ask you whether or not you believe, and therefore your government believes, that it is appropriate

for any one individual, including the Minister of Health, to have unfettered, unchecked, individual power to determine what is in the public interest in the delivery of health care. There's no question that's what this bill does. Unamended, that's what it does. Do you believe it is appropriate for one individual to have that power?

Mrs Johns: I guess this is a personal call you're asking me to make?

Mrs McLeod: I'm asking you as parliamentary assistant, as the minister is not here.

Mrs Johns: Obviously, our government believes that cabinet and ministers, as elected officials, have the ability to be able to make decisions in the public interest.

Mrs McLeod: Ms Johns, that is not the question that's before us with this section, which gives the Minister of Health the power to act in his personal opinion. This is unprecedented. This is a huge power to give to one individual. That individual minister can operate without reference to cabinet, without reference to the Legislature. It is a sole, individual power to act in the public interest.

I ask you not for an individual opinion, because it has been made very clear to us that you are the representative of the Minister of Health. So do you, as the representative of that minister and of your government, believe it is appropriate to give that power to a single individual to operate even outside of cabinet control or check?

Mrs Johns: The only thing I want to clarify before I comment is that you said "in his opinion," but it's "in the public interest."

Mrs McLeod: In his opinion of what constitutes the public interest.

Mrs Johns: Which is challengeable in a court, but I believe, yes, he should have the ability to be able to decide on payments to hospitals.

Mrs McLeod: So a single individual should be able to make the determination of the public interest in health care without any regard to executive council, to the Legislature or to any existing law other than the one that gives him the power to act unilaterally, and it is not, as I've heard the response from the ministry legal adviser, truly appealable in a court, because there is nothing written in law that could hold him accountable. That is an astounding statement to make on behalf of a government, Ms Johns.

Mrs Johns: If he acts in bad faith, he's held accountable.

Mrs Ecker: Ms Johns has put very well the fact that this government was given a mandate to act and to try and restructure within the health care system, and that this was very much needed. It's also important to note that there is legislation which gives ministers of Health significant power, legislation which the two previous governments and our party at the time supported.

The Regulated Health Professions Act does give a minister the power to require a council of a regulatory college—that's the council, the 21 colleges that govern our health professions out there—to do anything that in the opinion of the minister is necessary or advisable to carry out the act. So I suggest this is not an unusual power that has been put forward and I think there are many checks and balances within the system of this government to ensure that it will be exercised appropriately.

The Chair: Any further discussion on this amendment? Shall the amendment carry?

Ayes

Caplan, Lankin, McLeod, Phillips.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment does not carry.

The third amendment we will consider is also from the Liberals.

Mrs Caplan: I move that subsections 6(1), (2) and (3) of the Public Hospitals Act, as set out in section 6 of schedule F to the bill, be struck out and the following substituted:

“Direction to cease operation

“6(1) Upon the recommendation of a district health council and subject to subsection (6), the minister may direct the board of a hospital in the jurisdiction of the council to cease to operate as a public hospital on or before the date set out in the direction where the minister considers it in the public interest to do so.

“Direction re specified services

“(2) Upon the recommendation of a district health council and subject to subsection (6), the minister may direct the board of a hospital in the jurisdiction of the council to do any of the following on or before the date set out in the direction where the minister considers it in the public interest to do so:

“1. To provide specified services to a specified extent or of a specified volume.

“2. To cease to provide specified services.

“3. To increase or decrease the extent or volume of specified services.

“Direction to amalgamate

“(3) Upon the recommendation of a district health council and subject to subsection (6), the minister may direct the board of two or more hospitals in the jurisdiction of the council to take all necessary steps required for their amalgamation under section 113 of the Corporations Act on or before the day set out in the direction where the minister considers it in the public interest to do so.”

Speaking to the amendment, and I will be brief, this amendment simply requires the recommendation of a district health council, where one exists, before the minister can take any action. The truth is that the minister can ignore what the district health council has to say, because they are advisory in nature. What this will do is stop the minister from acting unilaterally. If the minister is truly going to do what we've heard from Mrs Ecker and the government benches time after time, and that is have a process that involves the district health council, then this amendment should be accepted, because all it does is put in place a little bit of process.

It requires the restructuring commission to do a human resource adjustment plan. It requires district health councils to publish notice of recommendation and to have the minister hold hearings, and I believe it would also require the district health council to do a number of studies as set out in section 6.1. This is purely process.

It's make sure you have the human resource adjustment plan so you can consider the concerns of nurses, doctors and other hospital workers, that the district health councils have been involved where there is a district health council. All this is some comfort to the community that the minister or the restructuring commission, which could be just one person, can't walk into their community without some process. That's all this is, a little bit of the due process that we're so concerned has been eliminated from this bill.

1630

Mrs Johns: I'd just like to first of all draw attention to the fact that this amendment has in three occasions “in the public interest.” That was one of the debates of last time, what was the matter with the process that we had suggested in the previous section, which was “in the public interest.”

Mrs Caplan: So you will support the amendment?

Mrs Johns: What we have here is the minister in a reactive mode. He has to wait; he can't react until he gets a district health council recommendation or approval. We believe the restructuring process has to be expedited and in some cases it has to occur quickly, and it certainly puts the minister in a position where he has to wait for a recommendation or a report from the district health council.

Mrs Caplan: I agree that we have heard all along from you that the intention is to be reactive and to have process and to have communities. We've heard there are 60 reports out there and that it's the minister's intention to respond to those reports. What I'm hearing from you now is that you don't want to have to wait until you have a report, that you want to be able to go in unilaterally, without a report from the district health council, without community process, and dictate what is going to happen in that community without any process. That's what I heard you say, Mrs Johns.

Mrs Johns: We've been through this debate before. There are other circumstances; ie, local planning, people in district health councils who have different opinions. We have a number of different circumstances where we would need to react quickly without necessarily a report from a district health council.

Mrs Caplan: We know you have 60 reports out there. What this says is that the minister would have to receive those reports and have some community process before he can move to close hospitals in a community.

Mike Harris said, “I have no plan to close hospitals.” Surely, if he is not going to be accused of another broken promise, what he meant was the district health councils are doing these plans, and “I would never walk into a community that hadn't developed their own plan.” Surely that's what he meant when he said, “I have no plan to close hospitals.” Obviously, Bill 26 gives massive powers for closing hospitals. Surely he wouldn't do that without having the local planners, the eyes and ears of the community, as Health Minister Wilson described them, the local planning body, the district health council—certainly you would want to have that process where the local district health council would be involved and had developed a plan for the minister's approval before he could move in. Certainly that's what was contemplated when

Mr Harris said, "I have no plan to close hospitals." Wouldn't you say that's a reasonable expectation of what those words meant, Mrs Johns?

Mrs Johns: As we said earlier today in the amendment we approved that the NDP put forward, if there is a plan, we will consider the recommendations of the plan. But if there is other planning that may come out of the local community, we may consider that process too. We'll be looking at many different methods of deciding the ability to provide the best health care in Ontario.

Mrs Caplan: What I've heard you say is that you do not respect the role of the district health council in communities. What I have just heard you say is that you want the power to unilaterally walk in and tell communities, "I'm going to close your hospital." If you do not support this amendment, that's the message they're going to receive. I have nothing further to say.

The Chair: Any further discussion on this amendment? Shall the amendment pass?

Ayes

Caplan, Lankin, McLeod, Phillips.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The motion is defeated.

The next amendment that we'll entertain is one from the New Democrats.

Ms Lankin: Let's try this again. This is virtually the same wording as is in Bill 26, and I point out to Ms Johns, when you were attempting to make a point with Mrs Caplan about the reference to "in the public interest," that's in fact from Bill 26. All Ms Caplan's amendment did was instead of saying "the minister may direct," to say, "upon the recommendation of a district health council the minister may direct." So it's your words. It's not words that we're putting forward and recommending.

My amendment actually is very similar, and I'll read it into the record, but it is virtually word for word what is in Bill 26 but it substitutes the concept "upon the recommendation of the commission." If you remember, I earlier wanted to get in the definition who the commission was. This is the Health Services Restructuring Commission.

I move that subsections 6(1), (2) and (3) of the Public Hospitals Act, as set out in section 6 to schedule F of the bill, be struck out and the following substituted:

"Direction to cease operations

"6(1) Upon the recommendation of the commission, the minister may direct the board of a hospital to cease operating as a public hospital on or before the date set out in the direction.

"Direction re specified services

"(2) Upon the recommendation of the commission, the minister may direct the board of a hospital to do any of the following on or before the date set out in the direction:

"1. To provide specified services to a specified extent or of a specified volume.

"2. To cease to provide specified services.

"3. To increase or decrease the extent or volume of specified services.

"Direction to amalgamate

(3) Upon the recommendation of the commission, the minister may direct the board of two or more hospitals to take all necessary steps required for their amalgamation under section 113 of the Corporations Act on or before the date set out in the direction."

In this particular motion, what we do is try and address two things: one, the fact that in Bill 26 as it proposes to amend the Public Hospitals Act and give the minister the power to close or merge a hospital or to direct the ceasing of operation or the ceasing of provision of certain services, we try to do two things. One, we try to give some definition or some sense of process to what "in the public interest" would mean. So we delete those words "in the public interest" and we say to the minister, before "the minister may direct," that it has to be upon the recommendation of the commission.

Now if you'll recall the debate we've had so far, the reasons that Mrs Johns argued that we needed to have the commission established was so that the commission could in fact get out there and implement the health care restructuring that needed to be done. She argued that they needed to have the powers of the minister given to them in the legislation so that the minister can delegate his powers. Quite frankly, when I asked what powers, the only section that she could actually identify for me was section 6 under the Public Hospitals Act, which is this section.

So what we do here is we try and tie it back the other way and say, okay, we have a health care restructuring commission. We have some minimal ties to the fact that they have to at least have regard to reports from district health councils. We did that amendment earlier. So we know that they're going to at least see whatever reports come from a community, whether they're full plans for implementation with consensus or whether they are a report of a lack of consensus. At least that is provided to the commission.

The commission, which has been delegated the duties and the powers of the minister to implement restructuring plans, is the group that will be making the decisions as they have set out in the act and passed further amendments. So the minister in this section, if he's going to exercise these powers, surely it isn't going to be independent of the commission. Where else will the minister get the information from that the minister is in fact going to close a hospital or direct to cease the provision of certain services if it's not from this commission that he's delegated all of this authority to earlier on to make these decisions with respect to implementing hospital and health care restructuring?

1640

So we set it up this way because we felt that it was too broad and unfettered the way it was, that there were no linkages again to any of the earlier provisions that the parliamentary assistant has argued were necessary, the powers of the commission and the establishment of the commission, or to the district health council reports, which we were able to get a minor amendment which starts to link this. So we're starting to try to weave a

process here that at least we know that the pieces—it's like connecting the dots, you know? We're trying to connect the dots.

And I will also be fair in my presentation of this and suggest that it is a helpful amendment because some of my further amendments that come forward will try to give a process of public scrutiny to the work of the commission, that the report of the commission, the recommendation of the commission, needs to be tabled and that there should be some opportunity to have a response to that—not prolonged; I'm talking about one month. Those amendments will come up.

If in fact what we've heard all the way through the debate so far is that we need to be able to move quickly, the Health Services Restructuring Commission is the one that's going to do this, that's going to implement this, needed to have the powers that are going to make this happen, and particularly the powers under section 6, then surely the minister, if he's going to delegate the powers under section 6 to the commission, if he's going to use the powers himself, at least he should listen to the commission about where he's going to use those powers.

Mrs Johns: Commenting on this section, I would just say that I am surprised that the NDP would want to duplicate the role of the district health council—

Mrs Caplan: What role?

Mrs Johns: —and make the minister subject to the commission.

The commission is not an advisory board. The commission is a decision-making organization. This takes all the decision-making away from the commission, makes them report back to the minister, as opposed to just going out, implementing the process, expediting the process, moving on.

Ms Lankin: Excuse me, no, but that's wrong.

The Chair: I know, Ms Lankin, but we'll let Mrs Johns finish, and then you can make a comment.

Ms Lankin: That's dead wrong, Helen.

Mrs Johns: No, I don't think so. That's how I read it.

Ms Lankin: Well, then explain that to me, please.

Mrs Johns: You say, "Upon the recommendation of the commission, the minister may direct the board of the hospital to do any of the following" type of operations: "To provide specified services...." "To cease to" direct—the commission can make those decisions themselves. We don't need to get the minister back involved in it again. The commission has those powers.

Ms Caplan: Everyone's worst nightmare.

Mrs Johns: Did I say something wrong?

Ms Lankin: This is just amazing. Yes, in my argument I made it quite clear that the commission has those powers. Your section that you're trying to pass un-amended says, "The minister may direct the board of a hospital to cease operating." Are you suggesting that that takes the powers away from the commission? No, you've given yourself the ability to delegate those.

What I'm saying here is that the minister is going to exercise them, right, as opposed to delegating them? If at any time the minister chooses to exercise them, it should be in relationship to somebody out there, not just Jim Wilson's personal whim; somebody should advise him. And here, I'm using the body that you've established,

that you've said is going to be implementing, that's going to be making the decisions, that's going to be doing all of this, and suggesting that if the minister ever does choose to use this section himself, as opposed to delegating it—which he is fully able to do, you're quite right; this and anything else he wants to, to the commission—then he should at least have the recommendation of the commission upon which to base his actions.

Mrs Johns: Well, he has the recommendations of the district health council reports, if there is one, if there's a local planning, he has all those kinds of recommendations that he can draw upon, he can use to make his decisions.

Ms Lankin: I find this mind-boggling. You are sitting there and trying to suggest that you'd be amazed that I would try and duplicate the process of the DHC. You've refused on every count to build in strong linkages to the DHC. You've refused to be bound by DHC plans where they exist and where there is a consensus. You've refused all the way along. The only thing you agreed to was a minor reference that the commission has to look at and read and think about any report that comes out of a local community. That's the only thing that you agreed to.

Now you're arguing that the minister shouldn't take the recommendation of the commission, your commission, the commission you've been arguing with us for the last two days is the body that's going to do all of the restructuring and make all the decisions about what hospitals should close. And all I'm saying is, in your section, where you give the minister the power to close a hospital, he should do it with the recommendation of the commission, which is the body that you've given the power to to make all these decisions.

Mrs Johns: I'm saying that the commission is not an advisory board. It's an implementation board.

Ms Lankin: This doesn't change it. I'm not taking away any powers from the commission. I'm not changing their role or function. The minister can still give them any duty he wants to assign them or any power he wants to assign them, but if the minister himself is going to exercise the power under section 6, if the minister is going to direct the closure of a hospital as opposed to delegating the powers under section 6 to the commission to do, that he at least have to have the commission telling him it's a good idea, that he can't act unilaterally. It doesn't change the role of the commission.

The Chair: Maybe we can get a couple more people in on this discussion; it might wend its way through a little bit more.

Ms Lankin: Mr Chair, I think that's a helpful suggestion, but I, at this point, would like to hear an answer from Ms Johns because I have to say that so far it has been quite circular, her logic, and has not addressed the point of this amendment. So if I could get an answer from her then perhaps we could go into debate.

Mrs Johns: What I believe will happen, as you know, is that a district health council report will come, the minister will approve it, decide how it should go forward and the commission will implement. What you're saying to me, and maybe I'm missing something and I'll get another interpretation as we go through here, is that then the commission comes back to the minister and says,

"Okay, this hospital should cease to operate." We're not going circular. The commission can implement the policy.

Ms Lankin: Yes.

Mrs Johns: So why do they need to come back to the minister?

Mr Silipo: Why do you need section 6 at all then?

Mrs Johns: Because we need to restructure hospitals within Ontario.

Mr Silipo: But if the commission is going to do all that, you don't need section 6 at all.

Ms Lankin: Section 6 of the Public Hospitals Act says the minister may direct the board of a hospital to cease operating. Do you ever envision the minister doing that? I know the minister can delegate that power to the commission and that the commission will be doing that. That's fine. Is there ever any time that the minister will do that?

Mrs Johns: That calls for speculation; I don't know. It's possible.

Ms Lankin: If it wasn't possible, I would suggest that you do away with that section or that you say the commission may direct the board. Let's figure out who is making the decisions, but if it's possible that at some point the minister may not want to delegate that authority and he may want to exercise that authority, do you not think it's reasonable, given all of what we've talked about in terms of trying to build linkages, that the DHC report at least be looked at by the commission, and the commission's the one who you're assigning the duties to do all the work, to figure out what hospitals should close? Is it not reasonable that the minister should at least have a recommendation from the commission if he's going to exercise those powers himself?

Mrs Johns: I believe that the district health council could give him a recommendation and he could proceed from there.

The Chair: I think it's time now to let somebody else in on the discussion because it doesn't seem to be going anyplace. Ms McLeod, you were next on the list.

1650

Mrs McLeod: It follows directly from Ms Lankin's concerns. I find one of the advantages of having a parliamentary assistant here is that perhaps almost inadvertently she tends to reveal the truth of the intent of the government, and that can be sometimes very helpful to the committee. I think in this case, by suggesting that Ms Lankin's amendment somehow suggests a duplication between the restructuring commission and the DHC roles, and her clarification of what the difference is is that the commission is a decision-making body—it will make the decisions—brings it home absolutely clearly that the intent of this government and this minister is to use those delegation powers, the powers that the minister says he would only use in rare exceptions. You need a commission that is not making recommendations to the minister but that is going to be the decision-making body.

Mrs Caplan: The puppet of the minister.

Mrs McLeod: The debate's over. I don't want to reopen the debate about the delegation powers. We've obviously lost that, as has every single presenter who wanted a limitation on the ability of the minister to delegate those kinds of decision-making powers to any

other individual or body which has no electoral accountability. I would simply suggest that no minister and no government can duck the responsibility by simply delegating his authority to somebody else.

We tried very hard to get some way, in the most simple amendments we could present, of recognizing the role of the district health council because our concern is that the government, in this bill, has not spelled out the role of the commission and the way in which it differs from the district health council or is complementary to the role of the district health council. Where is the requirement that either the commission or the minister has to take into consideration the planning of the district health council? Yes, it exists. Yes, it advises. But it certainly isn't as powerful as the commission and there's nothing that directs, that requires either the minister or the commission to act on the advice, or even to take into consideration the advice, of a district health council.

We will support the NDP amendment. It's getting to the point where we are really basically trying to do some damage control on a piece of legislation that we think is really intolerable. We're hesitant to support "acting on the recommendations of a commission" when the roles and responsibilities of the commission have not been spelled out, when the minister still retains the ability to delegate his authority to that commission. But, having said that, we need at least some kind of minimal damage control and this is at least a step forward.

Mr Clement: One other reason why I think the amendment proposed by Ms Lankin does not meet with approval from my perspective is the elimination of the phraseology "in the public interest." I understand her point of view on this. She's made it evidently clear over the past three weeks of public hearings that she feels that this phrase is unduly broad and gives the minister undue power with respect to the decisions that have to be made. But I would remind Ms Lankin and the committee that there are in fact a number of statutes under the Revised Statutes of Ontario that have similar wording.

I would draw to the attention of this committee that under the Business Corporations Act there is language where there is a cancellation of the certificate of the business corporation if it is in the public interest. Under the Commodity Futures Act the commission body can recognize a self-regulating body if it's in the public interest. In the Conservation Authorities Act we're talking about water here—water, the sustenance of life—where the minister or his or her representative, if he considers it in the public interest, issue instructions—

Ms Lankin: On a point of order, Mr Chair: Just to try and facilitate things here, I'm quite willing to put the words "in the public interest" back in. Now Mr Clement can tell me why he's going to not vote for my motion upon the recommendation of the commission. That's the point really to be made in this.

Mr Clement: I'm a bit confused because that is at variance with what Ms Lankin was concerned about in our proceedings over the past weeks. I'd have to see the wording for that. Actually, quite frankly I said—

Ms Lankin: Mr Chair, on a point of order: If I could facilitate it, the exact same wording that is in Bill 26 except where it says "the minister may direct." In front

of each of those words, you add the words "upon the recommendation of the commission." That's the point we would like to try and make here. That is the very last effort at damage control.

The Chair: Are you proposing an amendment to your amendment?

Ms Lankin: Yes.

Mr Clement: Thank you for trying to accommodate me. I believe I said at the outset that another reason I could not support the motion was the following—

Ms Lankin: I thought that's what you would do.

Mr Clement: I'll go back to the first reason then that I cannot support the motion as read. I think it comes back to that there's a dissonance between what we heard from the opposition—and I'm not trying to paint Ms Lankin into a corner. I can't remember precisely whether she was on this point or whether it was Ms Caplan. Sometimes it blends together and I do apologize if I'm misspeaking your particular point of view. But there was a suggestion made by one of the opposition parties that in fact the minister should take responsibility for the actions of his ministry under this legislation and not delegate that power, and it seems to me that the language contained here is the exact opposite of that point of view. You have not convinced me. I understand your argument and I listened closely to your cross-examination of Ms Johns, but from my perspective you have not convinced me that this is not completely at variance with the position taken on the road.

Ms Lankin: What's wrong with this language?

The Chair: Mr Clement, are you finished?

Mr Clement: I am finished, sir.

Mr Phillips: Actually, just for the record, I did get elected to a hospital board. Mr Clement said earlier that—I think he was sort of laughing about election—

Ms Lankin: That means you weren't a volunteer then.

Mr Phillips: Well, I was even a volunteer and I was paid every cent I was worth, of course. I think the public know you get no money for it. I actually ended up as chair of a hospital.

The only reason I say all of that is I think if you want to define an organization where the community feels strongly about it, it's a hospital, and that normally they're born—in the particular case of the hospital where I was, there was an order of sisters who decided they needed a hospital in the community and from the ground up built it with the help of a lot of people.

I'm just saying that we have to be really careful in this process. I understand there are all the empty beds and we can do all the number tumbling here around, "There are 5,000 empty beds. That means we close 10 hospitals." Bang, bang, bang. Every single hospital that you plan to close, the history of it is such that it's there for a reason, people have put their hearts and souls into it, and this cannot be and should not be, and in the end will not be I think, a simple numbers game here. I think it's in everyone's best interests that we try and put together in this bill a process where, in the final analysis, the public are astute but they want to make sure this process is fair.

As I read the bill, the minister gets it every which way here, every way the minister wants it. If the minister thinks there's going to be a lot of heat, you get it off to

the commission and you get the commission to do the dirty work and the minister cannot touch it: "Sorry, it's their recommendation. Don't blame me." But in this section, as I read it, the minister can completely bypass the commission and just decide that he is going to take the decision on the hospital. I don't know why the minister might do that, but I can speculate on some reason, and there is no public input into that. The minister may direct the board of a hospital.

I think what Ms Lankin was doing with her motion, and listening carefully I don't think it's inconsistent with what she said before, is saying the commission should look at this before the minister makes a unilateral decision. Let the commission make the recommendation to the minister. Maybe I'm misinterpreting the intent of the motion, but that's how I read it.

If we approve section 6 as it is, without this amendment, it seems to me the minister—well, I'll ask Ms Johns; maybe that's the best way to get an answer. The way the bill is currently written, am I correct in assuming the minister may make that unilateral decision, that it would not be a recommendation of the commission—6(1), page 49 of the bill?

Mrs Johns: We have said, though, that the minister will take into consideration district health council reports or programs or—

Mr Phillips: Where do I find that language here?

Mrs Caplan: What section is that?

Mrs McLeod: It's not there.

Mr Phillips: Get the lawyer.

Mrs Johns: Oh, I see. It was in the commission that we talked about it. Okay.

Mr Phillips: But can you help me with where that—

Mrs Johns: But yes, the minister could make a unilateral decision if he so chose.

Mr Phillips: That's what I thought, and Ms Lankin's recommendation is that that not take place. We all know that there are some tough decisions by the minister, but I think what people are definitely worried about is that—and the government's already told us—this deficit is such a problem that you couldn't even wait. This bill was wanted to be passed by December 14, because it's such a desperate problem. We know how you feel about things. We know you are anxious to get some hospitals closed. We know that, you've said that. But why would you not want to adopt Ms Lankin's proposal that simply ensures that you have the commission to prepare the recommendation for the minister?

Mrs Johns: Because we want to move forward as quickly as possible with hospital restructuring. We want to be able to implement the process as quickly as possible to maintain health care in Ontario. If we don't move forward, some of these choices we won't be able to make because there's a demand for dollars within the whole health care system. We need to reallocate funds from the hospitals to other areas that people want in Ontario.

Mr Phillips: I appreciate that. I appreciate that's what you're saying. So of the hospital restructuring plans that you've got under way, how many would you see using these powers where you've got to move very quickly? How many of them would you see the minister making the unilateral decision on?

Mrs Johns: We would perceive that in almost all cases the decisions would go to the commission.

Mr Phillips: Why would you not then, if it's virtually all the cases, incorporate Ms Lankin's recommendation into your legislation? The only reason you would object to that is that the minister has up his sleeve wanting to move without the benefit of any commission.

1700

Mrs Johns: I feel like we're going around in a circle and I'm not sure where we are. Let me go through the whole process again. Maybe I've missed the point of this. The district health council will do local planning. It will come up to the minister. The minister will decide or approve a plan. It will go to the commission and the commission will implement the process. The commission is a body that needs to expedite the process and move forward with it. That's the way most of the 60 reports, or more than that by the time we finish, will proceed. Have I answered your question now?

Mr Phillips: No, because what you're asking for is the legislative authority to not do that. You're asking for the legislative authority for the minister simply to make the unilateral decision.

Mrs McLeod: What happens to the ones that aren't the most?

Mr Phillips: Frankly, I'm suspicious. My apologies, Mr Chair, for taking the time on this, but we thought you wanted the one blank cheque. Now you want two blank cheques. You want the blank cheque for the minister wherever he wants to send it to the commission and then wherever he wants to just do it himself anyway. It frankly is a bit frightening and your explanation has not been overly helpful. You gave me an explanation why you wanted this, which was: "We're setting the commission up. It's going to go to the commission." This has nothing to do with the commission. This gives you the authority to bypass the commission.

I'm actually wondering what in the world you are doing. You give a big explanation of the need for the commission in this process and then you essentially set up a completely parallel process that is contrary to what you said in the commission. Whoever drafted this—I suppose it's a bureaucrat's heaven, because if we don't like one route, we take another route, and there's no appeal. We are going in circles primarily because you have no logic. You give us a logical explanation for one route, and then you set up a completely different route going the other way and you give us a completely logical explanation for that.

Mrs Johns: I feel that's happening too. One moment you're saying to me the minister shouldn't have the power and the next minute you're saying the commission shouldn't have the power. So you don't want anybody to have the power to restructure.

Mr Phillips: No, no, Ms Johns, you've not listened to me. I'm asking you why you want these two different processes. I'm not making a judgement on it. I'm asking you why you want the two different processes. You might have heard somebody else say that but you didn't hear me say that. Why do you want two what seem to be contradictory processes built into the bill?

Mrs Johns: We don't think they're contradictory processes. We believe that the commission may implement the results of a district health council study and may assist in the restructuring in a community or we believe that the minister may approve and allow the community to go forward and to work to create its own localized situation. We believe there has to be an approval level and an ability to implement on two levels.

The Chair: Mr Phillips, do you think we can get somebody else into this?

Mr Phillips: I certainly will, just because we know we will lose, they will win, and the logic of the argument means nothing here. They've got the gun, we're unarmed.

The Chair: Mr Silipo, can you contribute to this?

Mr Silipo: I'm going to try, Mr Chair, because, I tell you, I found following this exchange and a couple of previous ones quite frustrating. As a member of the opposition, I don't agree but I can certainly accept the position that Ms Johns has been taking, which is that the government feels they need to do this restructuring largely and almost unanimously through the restructuring commission—I think that's what Ms Johns has been saying—and that you don't see that the use of section 6 really will come into play except maybe in a couple of instances.

All this amendment is doing is—it's not saying change one process for the other—is saying that, in those instances where the minister chooses to exercise that power, he should take into consideration the recommendations of the commission, the same commission that will have done the bulk of the work, so that the government will still have the two choices available to it, the two routes.

They can choose to have the commission do all of the work, make all of the decisions, as Ms Johns has said, in which case, section 6, amended or unamended, would never come into being, would never come into use, because the commission will have used the power that the ministers will have given to it through regulation to simply do all of that. All we're saying through this amendment, and this is where it's completely consistent with that, is that where, instead, the minister decides to get involved directly, he should at least take into consideration the recommendations of the commission because the commission will have done some work in that area.

That is really the nub of it. That's why I find it really frustrating to understand what Ms Johns and the government are having trouble with as far as this recommendation is concerned. I don't know if Ms Johns wants to reply, but I guess I'd just put that again, because there isn't an inconsistency.

It doesn't say that the minister has to be involved in every instance; it simply says where he chooses to be involved, and you're giving him that power under your own drafting—you're saying the minister can get involved directly—he should at least take into consideration before he exercises his judgement the recommendations and the work done by the commission up until that point. What's the problem with that?

Mrs Johns: As we see it, the minister approves the plan in the first place, so why does it go to the commission and come back to the minister again? This is the quandary we're caught in, and I think it's a difference in

the vision of how this restructuring committee is going to work that is the problem. I've tried to express it very clearly.

Mr Silipo: Are you saying, Ms Johns, that there are instances where the minister will choose not to have the commission involved at all?

Mrs Johns: Yes. If the local planning process is going through by itself and they can handle it by themselves, the commission may well not get involved. That's correct.

Mr Silipo: So you want a situation where, on the one hand, you have the commission involved to do all the work that you said, to make all the decisions around closing hospitals etc, and in some instances the minister will just make that decision on his own without even that work taking place.

Mrs Johns: The minister may say when Windsor comes to the table—well, Windsor is a bad example because it has already happened—but when Huron county comes to the table and says: "Here is my report. We have consensus. We would like to cease to operate one hospital," or, "We would like to bring services together," and says, "We can handle this," it will go forward, it will be a local-initiative-driven process.

1710

Mr Phillips: Put that in then.

Mr Silipo: Yes, I can see that in those instances your objection would be that the recommendation of the commission would mean that the commission would have to deal with it when it may be your intent not to have the commission deal with it.

The importance I think we're placing on this is that we feel before the minister exercises his discretion, he ought to take into consideration and there ought to be something in the legislation that says the minister just won't wake up one day and decide he's going to exercise his discretion without taking into account the work that's happened locally.

If that work has happened locally through a district health council, surely we can find a way to write that into legislation in a way that still leaves the discretion in the minister's hands, which you want to see, and in a way that assures us that at least the minister in exercising that discretion has considered the work that has been done by the community. We managed to do that earlier on in one of the amendments.

Mrs Johns: And we have done that by saying that the process will happen in the public interest, so we believe we have done that.

Mr Silipo: But you would not be prepared to amend this to even include a provision as harmless as the one we negotiated into the other section, which said, "having regard," I think were the words, "to the reports from the district health councils."

Mrs Johns: As I suggested before, if you have an amendment you're thinking of, we could talk about that. I can't come right off the top of my head. If you want to put something in writing, I'm prepared to look at it.

Mr Silipo: I just wonder, Mr Chair, whether it would be then acceptable that we stand this down and try to see if some acceptable wording could be arrived at.

Mrs Johns: This amendment I can tell you is not acceptable, so there's no sense in standing it down.

Mr Silipo: I'm looking for a way to hold the place, Mr Chair, because if we simply vote on this, we're not able to come back to it, I gather, under the rules.

The Chair: With unanimous consent we can come back to it.

Mr Silipo: That's fine. I'll defer to Ms Lankin on this, but certainly that would be my suggestion at this point.

The Chair: Mr Silipo has suggested that we deal with this motion but then have consent to come back—

Ms Lankin: Am I still on the speakers' list?

The Chair: Yes, you are.

Mr Clement: Where are we, though, Mr Chairman? I'm not quite sure where we are.

The Chair: I'm not quite sure either. Mr Silipo has suggested that we continue to deal with this motion but stand down any decision so that we can revisit it.

Mrs McLeod: The parliamentary assistant made it clear that they're not prepared to consider the amendment, so what do we gain by standing it down?

The Chair: We can't stand it down. The parliamentary assistant has suggested she's not in favour of standing down the amendment, she will not agree to that, so we have to continue to deal with the amendment, then we can make your decision after.

Ms Lankin: Ms Johns, you have on a number of occasions said in response to questions I've put or in response to questions Mrs Caplan has put that the minister probably wouldn't act independently on local district health council reports as they come forward from a local community, even where there's consensus, without the commission looking at it, because there are broader provincial interests and issues to be considered.

On a number of occasions when we said, "Gee, you don't really need this commission in all circumstances. There are communities that are proceeding and are going ahead," you said, "Yes, but we want that provincial body, that commission, to look at these reports and to make sure that there's some consistency in terms of how things are being approached from community to community, not to have a cookie-cutter approach, realize there are regional differences but some consistency, that we take a look at the savings that are going to be made because there's a process of provincial allocation, not just local allocation."

You argue both sides of every issue, which is really difficult, because when we said you don't need the commission in all circumstances, you said, "Yes, we do, because we have to have a provincial overview of this when we're proceeding to implement it." You also said: "The local district health councils can't implement. They're not an implementation body; they're a planning body. So we need the commission to be able to implement." But now you're saying, "Gosh, no, because you've recommended, Ms Lankin, that we have the commission make a recommendation to the minister." Now you're saying: "No, no, no, we can cut the commission out of it completely and the minister can do it simply on the basis of the local committee and they'll go ahead and they'll implement it." You keep arguing both sides.

You say I'm not being consistent in terms of my position around the powers of the minister. Let me come back to this. I've said on a number of occasions that I don't oppose the concept of a hospital restructuring commission. I don't think it's as necessary as you do, but I've said I wouldn't oppose it. But I said, "Let's get a process here." The minister should be making the decisions and the minister is the one who should be accountable. I don't think he should delegate his authority to make the decisions and to implement. I think he should be listening to the advice of district health councils and, if you're going to have a commission, the advice of the commission. But he's the one who should make the decision in the end. You've said no to that in some circumstances. You've said, "No, we want to be able to give the power to the commission and the commission can make the decisions and the commission can implement."

I had to fight to find the most weaselly words you would accept to get you to even agree that the commission would look at reports of district health councils. We've got that little, tenuous link now in the legislation.

But you're the ones who said: "No, it's not the minister who's going to be the final arbiter here. We want to give that power to the commission." I disagreed with that, but I also argued that when the minister made the decision, it should be an informed decision; it should be informed by local planning processes and, if you want this other step of the provincial perspective, the commission, that should be it.

My amendment is entirely consistent with that. It doesn't undermine the decisions you've taken. You still have delegated the power to the commission where you choose to do that. That's fine. I don't like that, but you've done it. But it says where you're going to have the minister act—back to my argument—it should be informed. It should be informed by somebody. The previous amendment from Mrs Caplan was informed by the district health councils. You said, "Oh no, no, it can't be by the district health councils because the commission's out there." So I've said, "Then informed by the commission, which has to have regard to local district health council reports," and you say: "No, no, no. The commission may not be involved because the minister may listen to the district health council."

Can you understand why this is so frustrating and why it's so totally unacceptable for you to say to us, "Well, go away and write another amendment and come back"? Are we going to play pin the tail on the donkey here? There's a simple request here to have the minister listen to the recommendation of the commission you're establishing, of the commission you have put all your faith in. When Mr Phillips asked why you need the minister to be able to do this, you said: "Because we want to move forward"—I've almost got your words memorized, I've heard them so often—"We have to be able to restructure hospitals. We have to be able to do it quickly. We have to be able to do this." It's the exact same answer you gave me when I asked you why you needed the commission.

What is it you want? Absolutely no process set out in legislation? That's what I come down to—no process set

out in legislation. Why don't you just have one line in this act that says, "We want to be able to do anything we want, whenever we want it"? Then we wouldn't have to quibble for so long about all these other sections. You've not put in any due process.

I want people to understand that all this amendment does is add the words "upon the recommendation of the commission," if the minister's going to exercise these powers to close or merge hospitals. That's all it does. And if we ever get to two sections down from this in this particular section, we've added what the recommendation of the commission shall look at. It will "be based on consultations between the commission and a district health council and on the advice and recommendations the commission received from the council as a result of that consultations." It doesn't bind them, but they have to consult, they have to talk, they have to listen. You've said all along that's what you expect will happen, that that's the process.

It would have to "include a labour adjustment plan for all health care workers, including physicians, who are affected by the proposed hospital closure or amalgamation or the proposed reduction in services." You will remember all of what we heard in terms of concerns, that where you're going to close or merge a hospital, what about the labour adjustment plans and particularly what about the revocation of privileges for physicians? You said: "No, no, no. If it's legit, the work's going on over there, there should be a physician human resource plan where the physician follows it."

And it includes a report prepared by the commission which sets out the commission's reasons.

1720

I think the real reason you are refusing to support my amendment is because you don't want to have any kind of process at all. This is a process that would say there's some public scrutiny and would say there's 30 days before the minister actually implements an order under this section. You're prepared to give 30 days' notice to the hospital. I'm saying, give 30 days' notice to the public and let the report and recommendation of the commission see the public light. Let the public see the recommendation for 30 days.

You don't like that. I think that's the real reason you won't support this. All your arguments that, "We need to move quickly; we need to restructure hospitals; we need to do this"—you need some restrictions on unbridled, unfettered powers that you're taking on to yourself in the Ministry of Health. You need some restrictions on that. You need some due process that at least ensures that you hear what people say locally and that you tell them in advance what it is that you're going to do about what they've said.

This is the minimalist approach to getting due process. There are many other concerns I raised during the weeks we were on public hearings. This is an attempt to deal with the bill that we know you're going to ram through and pass, to minimize some of the damage and set some minimal standards of public scrutiny. That's all this does.

Mrs McLeod: I get a sense that we're not likely to make much progress on this issue. I don't know why it has to be so confusing, particularly for anybody who has

been on the health subcommittee, because there were two concerns that were expressed almost universally. One is that the Minister of Health should not have the power to delegate to a non-elected body or individual decision-making capability, that ultimately that decision-making ability must rest with the elected member of the government responsible for the ministry. We proposed amendments to respond to that concern; we lost; that's not what we're debating now.

Then we move to the second concern, which was that in those areas where the Minister of Health keeps his ability to make the decisions unilaterally—because he doesn't have to delegate, and you've made that clear; it's still an option for the Minister of Health to act unilaterally—he should not be able to do that without reference to either the DHC or the commission or at least his own cabinet.

You've made it clear that you want the minister to have the power both to dump his decision-making responsibility on to someone else or to act unilaterally without reference to anybody else. As long as those are your bottom lines, any amendments we propose to respond to those two concerns are going to be lost, and we might as well move on.

Mrs Ecker: I appreciate and sympathize with the opposition as they attempt to understand what is very important legislation. I'd also like to say that I understand the opposition agree, that restructuring is necessary, that there may well need to be, across the province, amalgamations, mergers or closures, yet you've objected to the powers the minister has in the legislation to make that happen; you don't agree he should have that. Yet when there is an opportunity for the minister to delegate this to the commission, you don't agree it should be delegated to the commission. I guess I'm having a little difficulty understanding exactly how we should be making these decisions.

Mrs Caplan: That's provoked me. I wasn't going to speak to this—

Mrs Ecker: I have the floor, Mrs Caplan, thank you very much. We all agree the restructuring needs to happen. The minister in this legislation is clearly ultimately accountable for the management of the process. He is the Minister of Health. The legislation clearly says those powers are his.

Mrs McLeod: To delegate as he sees fit.

Mrs Ecker: I have the floor, Mrs McLeod. It is interesting to note that many of the people who did come before us—I remember this very clearly—said they actually trusted this particular Minister of Health. I say that for the record, because I found it a very interesting point. He is clearly accountable for the management of the system. He has these powers. In this legislation, he chooses to delegate these powers to the commission to do a task which is very important, to do a task which one person as a minister could not logistically, feasibly do as one individual.

The time that will be taken to meet with the local communities, to go over the reports and the data—I'm certainly familiar with the restructuring exercise. It's happened in my own region, and with the number of individuals who have to be involved in that process, the

time that has to be taken to make sure it's done right, I really think we don't want the Minister of Health to spend the rest of his or her time for the next four or five years sitting down going through all the nitty-gritty of 60 restructuring plans that are coming in.

The commission will be a very helpful process to assist him in doing that by being able to go and make those decisions. But ultimately, he is accountable: He is accountable for the commission; he is accountable for the powers he has delegated to the commission; he's accountable for the people who will be appointed to the commission, a group of individuals who will have the time and expertise to do the job.

He's also choosing the commission route, I believe, because one of the concerns that has been heard is about the politicization that can happen when you get into a local area and try and make decisions about who shuts what hospital or how things change. That's an extremely difficult thing for any community to accept and to go through. He is choosing to not have that politicization happen, again by using the route of the commission, because I believe that is an effective way to do it.

The other thing I would like to point out is that we do have process. There's process for closure and notice to hospitals when this has to happen, opportunities for hospitals to make representation. That is there, and I think this will be an effective tool for us to get on with the restructuring of the system, which we all agree needs to be done.

Mrs Caplan: I was provoked by Ms Ecker because she clearly, and I think deliberately, although I don't want to impute motive, misrepresented exactly what she knows is not what we have been saying. She has deliberately tried to distort what we have said.

I want to be clear and I want to be on the record. I, as a former Minister of Health, do not believe that any one person, whether it is Jim Wilson or any minister of the future or any minister in the past, including myself, should have all the powers contained in this bill. Not only do I believe that no minister should have those powers, but I don't think all those powers are necessary to restructure the health system and create a health system in the province.

Clearly, there are some changes that need to be made and we have put forward proposals for changes and actually supported updated wording on funding powers and so forth. What is needed is some process for how that's going to happen, and ultimately, it is the accountability of the minister. He cannot distance himself so that there's no political storm about this. If you don't think communities are going to be concerned and want political accountability for decisions made, they will. And if you think setting up an unaccountable, unelected commission—we've heard they want it to be arm's length—is going to diminish the political accountability of your minister, you're nuts. The government is going to be accountable for every decision that commission makes because it appoints them, gives them all the powers. And let me tell you something. You're making a big mistake if you think the communities don't know that this is a deliberate attempt to protect your minister from having to make those decisions.

We have said consistently that the minister must make the decision, the minister must be accountable. There must be due process. You have eliminated most of the due process protections. If you want to depoliticize and get support in the community, for God's sake, build in, in the legislation, the role of the district health council and the local planning body.

You've given the minister in this bill—and we've heard from your parliamentary assistant the confirmation that he doesn't have to wait for a report from the district health councils. He does not have to have any recommendations. He can act unilaterally without any authority. He can direct by regulation and give a mandate to a restructuring commission to do his will, without any due process in the community, without anybody at all advising him. That's what this bill says. He can do it. That is unprecedented in the history of this province.

1730

I want to be very clear. We all understand the need for restructuring. The only person in this province who said he didn't believe there was a need to close hospitals was Mike Harris, who said, "I have no plan to close hospitals." Everybody understands and accepts the need to restructure.

We do not believe the minister should have absolute and unfettered powers, to have the ability to influence and micromanage every aspect of the delivery of health services in the province in the name of restructuring. We are certainly willing to discuss and consider appropriate mechanisms for arriving at those important restructuring decisions. We believe the district health councils should be advisory but that the minister should ultimately make the decision to accept or reject or amend their decision. We believe there can be a restructuring commission, but the minister should not be able to delegate his powers but give them their authority by virtue of accepting their recommendation.

Am I clear? Do you understand what we are saying? Do not distort what we are saying. This is too serious to play stupid, partisan political games. Do you understand? That's what you are doing. You are being deceitful when you tell people what our position is when that is not so. I want to be very, very clear. I feel very strongly about this. I was not going to speak to this amendment, but you deliberately distorted our position.

The minister must be accountable, there must be due process and there must be the ability for community participation. This bill does not do any of that. If you want my support for any of it, you'd better God-damned well fix it.

Ms Lankin: Mrs Ecker spent a considerable amount of time explaining why the government wanted to be able to delegate powers to the commission. We dealt with that hours ago. I still am disagreeing with that aspect of it, but that's done and dealt with.

But, Mrs Ecker, you made some very interesting arguments. If I can replay them to you quickly, you talked about the fact that there's going to be extensive work involved in the restructuring process and meeting with communities and consultations and the minister couldn't be tied up doing all of that. You also said it should be depoliticized, that there should be a group that can make

recommendations based on the best interests of that community. We've been saying that in terms of the DHCs, but you're saying that in terms of the commission. Okay.

Now tell me, with all the arguments you made, which were the most articulate and eloquent arguments made yet in defence of my motion for amendment which says that the minister, if he's going to do this, should do it upon the recommendation of the commission, could you tell me, could someone tell me—I should come back to you, Mrs Johns—what is wrong with my suggestion that, where the minister is going to exercise these powers on his own, he at least has a recommendation from the commission, which is the body that's going to be having all the expertise, building all the expertise in this?

What's wrong with that? It doesn't change anything else you've got in there. You agreed to the minimalist fact that the commission, where it's going to act, has to have regard to local district health council reports. It took a lot of effort to find the mildest words you could agree to there. Now I'm asking you to look at what's pretty mild, that where the minister is going to act, that at least he listen to a recommendation from his commission, which is the body you've established, that you've vested all the powers in, that you say is necessary to move things forward, that you say is going to have all the implementation expertise; that's where it's going to be. Why is it a problem? Why is this language a problem? What problem would this cause in your system of moving ahead and getting things done quickly?

Mrs Johns: I'll try this again. What I think is being recommended here is that district health councils do reports. They find out what the people in the local community want. Now you're suggesting that the commission takes that same role and redoes what the district health council has done?

Ms Lankin: Mrs Johns, with all due respect, that doesn't say that at all. I mean, you keep—

Mrs Johns: We've already ascertained that we will at least consider what the district health council reports. We approved that amendment.

Ms Lankin: The commission will, not the minister.

Mrs Johns: We've already suggested that we will look at those district health council reports. I have told you that we believe the minister will look at those district health council reports and consider them also.

Ms Lankin: But you refuse to put that in the legislation. I don't know how many times here in response on this one amendment you've said the process is that the local district health council will do its report, it will go to the minister, the minister will approve it, then the minister will give it to the commission and the commission will implement it. You've said that over and over again. Guess what? That's not in the legislation. Would you like to put that in the legislation, because that's what you keep telling us is going to happen?

If you would agree to put that in the legislation, I'll withdraw this amendment and the other amendments that I have on process, because mine are much less satisfactory to the public and the communities of Ontario that are doing work on it than what you say is going to happen. If you'd agree to put that in the legislation, I think we

could move on fairly quickly and take a whole lot of these other amendments off the table.

Mrs Johns: I'm just telling you what we're planning to do.

Ms Lankin: Would you put what you're planning to do in the legislation?

Mrs Johns: We believe we have done that.

Ms Lankin: Would you tell me where in the legislation it indicates that the minister will review a local district health council report and approve it? Where does it say that?

Mrs Johns: Since we have district health council reports and they're being prepared in 60 communities, it would seem to me that someone will review them to be able to make decisions on that. That process was always there, is still always there. We have not touched that process.

Ms Lankin: No, but what you've done is you've set up other layers of processes. You've set up a commission, you've set up a process for someone to be appointed to review the commission, so you've got all these levels that you've set up. What's interesting is that you've refused to build the direct linkage to those district health council reports. But I digress. That's already done. You already refused that. We've already passed that section. You've already passed the section to delegate the powers.

Now we're here at the section where the minister is going to act and you've made it very clear that someone other than the minister is going to review all of those local district health council reports and that someone is the commission which has the implementation expertise. Please tell me what's wrong with the minister, if he's going to actually go in and close a hospital on his own, at least talking to the commission. Maybe it's because you have to use that other section where you appoint two people to look at what the commission's doing and then to report to the minister because you don't envision the minister can actually talk to the commission. I'm sorry, I am getting facetious at this point in time.

Interjection.

Ms Lankin: Well, I'm sorry. What is wrong—

The Chair: Ms Lankin.

Ms Lankin: Please answer the question. What is wrong—

The Chair: With all due respect, I think we've plowed this field quite enough. We're not making any progress at all here. The same question is being asked.

Ms Lankin: That may be your opinion, Mr Chair, that we've plowed this field enough. I don't know where you get off having a right to interject in this process with respect—

Mrs Ecker: He's the Chair.

The Chair: The same question has gone back and forth several times.

Ms Lankin: —to whether or not my questions have been answered. We have had a parliamentary assistant who has given different answers every time the question is put, who has not been acceptable in terms of the performance of providing us with information, has not in fact answered the questions that we have tabled with respect to our amendments and has sat here and said in

two different breaths, two different answers with respect to this amendment and refuses to tell me what is wrong with this amendment.

For God's sake, Mr Chair, we are trying to have some kind of due process put in this legislation so that communities know that the work they're doing is going to be listened to so that the experts you're putting in place and the expertise you're putting on to these commissions are going to have some relevance to decisions being made by the minister.

I come back to the point I made. You may as well have a damn act that says, "I'm going to do anything I want, when I want," end of clause, because that's all you do in every section.

Mr Clement: On a point of order, Mr Chair: I believe it is part of your responsibilities, if I'm not mistaken, and I stand to be corrected, to ensure that full and fair debate has occurred, and make a determination that if it has occurred we should move on. I encourage you to make that determination in this particular case.

The Chair: Basically, I'm in the position of suggesting things. Ms Lankin obviously didn't agree with my suggestion.

1740

Mr Silipo: Mr Chair, we've had a discussion on this, as I think you've noted. I just want to make the point as clearly as I can and I'm going to move an amendment to Ms Lankin's motion, which makes it fairly clear. What we'll see on the basis of that amendment is what the government's position really is.

I move that in the two parts where the words "upon the recommendation of the commission" appear, in 6(1) and 6(2), we insert right after the word "commission" "or having regard to district health council reports." So the subsections would now read, "upon the recommendation of the commission or having regard to district health council reports, the minister may direct" etc. That makes it clear that the minister would look either at the recommendations of the commission or, where there are no recommendations because there is no commission, would at least have to have regard to the district health council reports.

I chose those words specifically, Mr Chair, because they are the same words that we did get agreement on from the government in the earlier amendment. So that's what I'm putting, and I think we will see very clearly from the government side—if they're true to what they're saying they should have no problem whatsoever with this amendment to the amendment.

The Chair: A quick point of clarification, Mr Silipo. The terminology "upon the recommendation of the commission" appears in all three sections. Are you suggesting a change to all three sections?

Mr Silipo: I'm sorry, wherever it appears. Yes, in the three. I said two; you're quite right.

The Chair: Mr Silipo has moved an amendment to Ms Lankin's motion.

Ms Lankin: Actually, Mr Chair, I'm pleased to accept that as a friendly amendment. I don't think you need to vote on it as a subamendment.

The Chair: Thank you, Ms Lankin.

Ms Lankin: May I indicate that the answer we heard from the parliamentary assistant was that she couldn't support my amendment because it said "upon the recommendation of the commission," and that there are times when the minister was going to act, without going to the commission, directly on the recommendations of the local district health councils. So if that was the real reason, then we've solved her problem.

Mr Silipo: The wording would be to add, right after "upon the recommendation of the commission" in the three places that appears, "or having regard to the district health council reports."

Mrs Ecker: With all due respect, Mr Chair, we have been through this. We have provided the answer. I have said, for example, that the minister is ultimately accountable for this, remains ultimately accountable for this. Quite frankly, I don't think that the amendment is at all helpful to this motion, because the legislation clearly states the role of the district health council, clearly states they are there to advise, to make recommendations, to plan, to the minister. That is still there.

So the minister has within his power now, as he does under the old legislation and will have under 26, the ability to listen to and respond to the district health council recommendations according to how he may decide he needs to respond to them. I don't think we need to bring in another amendment to make something possible that is already there. I'm sure at this stage of the game if we couldn't have an amendment that said the sun was going to come up in the morning tomorrow, you wouldn't think it was going to happen. So I don't think I can support that amendment to that motion.

Ms Lankin: I actually would like to hear from Ms Johns in terms of this amendment because she has said there was only one reason why she couldn't support "upon the recommendation of the commission," and that's because the minister may sometimes act without the commission having to be involved directly on the advice of the local district health council. We've now covered that off. Unless she's saying that the minister is going to act unilaterally, and every time we asked her if that was the intent of this section she said no, that was not the intent of this section—unless in fact that was your intent, you will see that we have met your concern about the ability of the minister to act where there is a consensus in the local community and, "The report's been provided to me to approve and you don't need to involve the commission." So please tell me whether or not you will now support this amendment, and if you won't, why you won't. That was a specific question to the parliamentary assistant.

Mrs Johns: We'd like to stand it down and have a look at it, please.

The Chair: Do we have all-party unanimous consent to stand the amendment down? Agreed? Okay.

The next amendment we will consider is a government amendment.

Mrs Johns: I move that section 6 of the Public Hospitals Act, as set out in section 6 of schedule F to the bill, be amended by adding the following subsection:

"Notice of intention

"(4.1) At least 30 days before issuing a direction under subsection (1) or (3), the minister shall serve notice of intention to issue a direction on the board of the hospital to which the direction will be issued."

Subsection (1) is where a hospital ceases to operate and subsection (3) is a direction for amalgamation. We're suggesting that with either of those two issues we will serve notice that we are giving 30 days before we proceed with either of those two issues.

Ms Lankin: I'll start with a question about procedure. I suspect the next motion for amendment that will come forward, which is one I'll be moving, will have to be stood down as well because it relates back to the question of "on the recommendation of the commission," which you just stood down. It contains within it a limitation, "that at least 30 days before making a direction under this section." That's all of section 6, not just the two sections that the parliamentary assistant referred to with respect to 30 days' notice to the hospital involved.

I just want to be clear that that motion wouldn't be ruled out of order, contrary to the motion that Mrs Johns has just moved. I don't think it is, but I just want to be clear on that before we proceed, otherwise I would think all three sections together should be stood down to be looked at.

The Chair: While that determination is being made, in actual fact, the next motion after this one would be the Liberal motion 33a, just a technical change. There are two out of order here.

Ms Lankin: My question still stands with respect to 33. We need that clarification before we can proceed.

The Chair: It seems to be a question that is going to take a recess to get an answer to, Ms Lankin, so we're going to take a 5-minute recess.

Mrs McLeod: I just wanted to make two requests, if you consider them to be in order. The first is that the clerk's office would provide us with a list of the amendments that have been stood down so that we can know which amendments are outstanding and how they'll relate to future amendment consideration. I'm concerned that we're going to lose track.

The second is that we obtain a list of all questions that have been tabled in both subcommittees, with some indication of which of those questions have received an answer and which go unanswered at this point.

Mr Phillips: Are we having a break?

The Chair: Yes, we are now.

The committee recessed from 1750 to 1753.

The Chair: The answer to your question, Ms Lankin, is that passing the amendment we're talking about now would not rule your amendment out of order.

Ms Lankin: Okay.

Mrs Caplan: I'd like to place on the record a copy of a letter written by one of the presenters.

The Chair: Is this in connection with the amendment that we're looking at?

Mrs Caplan: It's just placing questions on the record to be answered in writing.

The Chair: We are dealing with an amendment.

Mrs Caplan: When would be an appropriate time for me to do this?

The Chair: Between amendments.

Mrs Caplan: That's fine.

The Chair: Mrs Johns has moved an amendment. Ms Lankin, you were asking whether or not I would rule your amendment out of order. Do you have any additional comment on Mrs Johns's amendment?

Ms Lankin: No, thank you. I have no problem with Mrs Johns's amendment.

Mrs McLeod: We will support this amendment only because it is minimally better than nothing at all, but I can tell you, I don't think this amendment is going to provide any reassurance at all to people in communities when the Minister of Health comes in and exercises all of these powers which continue to exist under the act, because virtually every other amendment we've proposed to put a check on the powers has been defeated. So as the minister takes unto himself the power to come in and say, "I'm closing your hospital, but I'm going to give you 30 days' notice," I don't think there's going to be a lot of reassurance in that.

The Chair: Any further discussion on the amendment? Shall the amendment carry? The amendment carries.

Mrs Caplan: I received a copy of a letter written by one of the presenters, Ms Elizabeth Margles. I'd like to table it. It was written to the minister and has 12 questions. The minister is preparing answers to this, but I'd like them presented to the committee and tabled for our information as well. Thank you very much.

The Chair: The next amendment is a Liberal amendment, page 33A.

Mrs Caplan: I'll read this into the record, on schedule F, section 6.

I move that subsections 6(5) and (6) of the Public Hospitals Act, as set out in section 6 of schedule F to the bill, be struck out and the following substituted:

"Amend, revoke direction

"(5) Upon the recommendation of a district health council and subject to subsection (6), the minister may amend or revoke a direction made under this section to a hospital in the jurisdiction of the council where the minister considers it in the public interest to do so.

"Limitation

"(6) The minister shall not make a direction under this section or amend or revoke such a direction unless,

"(a) the Health Services Restructuring Commission established in section 8 of the Ministry of Health Act has completed a human resources study on the effects of the proposed hospital closure, amalgamation or of the proposed reduction in services on nurses and other hospital staff and has proposed a transitional labour adjustment plan for nurses and other affected hospital staff;

"(b) the recommendation of the district health council upon which the direction, amendment or revocation is based is published in the Ontario Gazette and a notice of the recommendation given to the board of an affected hospital and to every physician with hospital privileges at the hospital;

"(c) the publication in the Ontario Gazette and the notice referred to in clause (a) states that public hearings shall be held with respect to the recommendation and states the time and place of the hearing; and

"(d) the minister has held public hearings with respect to the recommendations.

"Recommendation

"(6.1) A recommendation of a district health council referred to in subsection (1), (2), (3) or (5) shall include,

"(a) assessments of community needs with respect to health services and of the impact on the community of any proposed hospital closures or amalgamation or reduction of services, as the case may be;

"(b) analysis of hospital human resource plans with respect to physicians;

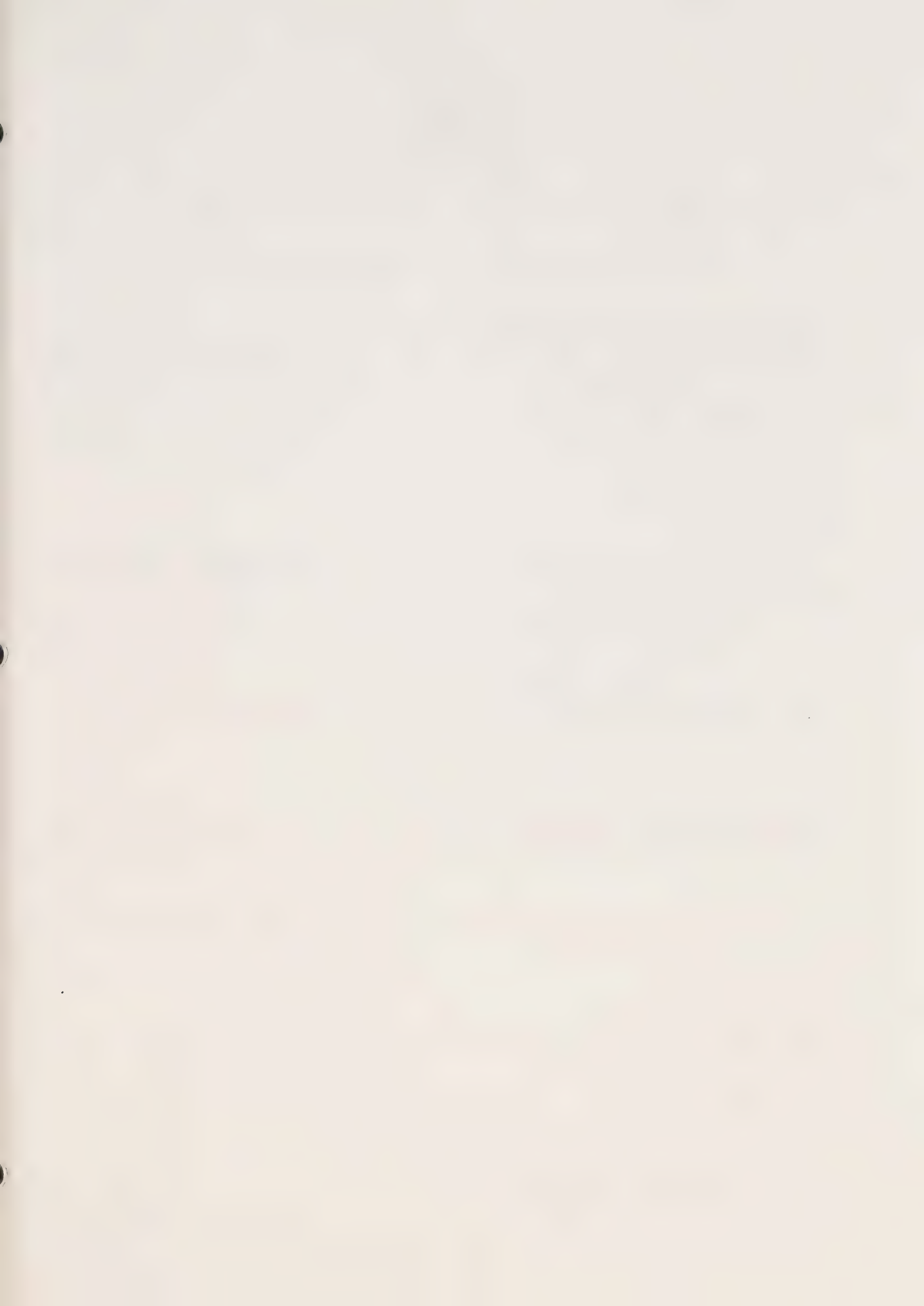
"(c) economic analysis of ways of delivering health services in the jurisdiction of the district health council, including studies as to the impact of the proposed hospital closure or amalgamation or of the proposed reduction of services, as the case may be;

"(d) assessment of the effect the proposed hospital closure or amalgamation or the proposed reduction of services, as the case may be, will have on physicians providing services in the hospital and proposals as to how to remedy such effects; and

"(e) discussion of alternatives to the proposed hospital closure or amalgamation or to the proposed reduction of services, as the case may be."

The Chair: In view of the hour, we are adjourned until tomorrow morning at 10 o'clock.

The committee adjourned at 1759.



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**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Caplan, Elinor (Oriole L) for Mr Sergio

Clement, Tony (Brampton South / -Sud PC) for Mr Kells

Ecker, Janet (Durham West / -Ouest PC) for Mr Stewart

Johns, Helen (Huron PC) for Mr Danford

Lankin, Frances (Beaches-Woodbine ND) for Mr Marchese

McLeod, Lyn (Fort William L) for Mrs Pupatello

Phillips, Gerry (Scarborough-Agincourt L) for Mr Grandmaître

Sampson, Rob (Mississauga West / -Ouest PC) for Mr Flaherty

Silipo, Tony (Dovercourt ND) for Mr Wood

Also taking part / Autre participants et participantes:

Cooke, David S. (Windsor-Riverside ND)

Curling, Alvin (Scarborough North / -Nord L)

Wildman, Bud (Algoma ND)

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Finkle, Peter, director, central region, institutional health group

McKeogh, Carole, legal counsel

Clerk / Greffière: Grannum, Tonia

Clerk pro tem/ Greffier par intérim: Decker, Todd

Staff / Personnel: Baldwin, Elizabeth, legislative counsel

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First Session, 36th Parliament

**Assemblée législative
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Première session, 36^e législature

**Official Report
of Debates
(Hansard)**

Thursday 25 January 1996

**Journal
des débats
(Hansard)**

Jeudi 25 janvier 1996

**Standing committee on
general government**

Savings and Restructuring Act, 1995

**Comité permanent des
affaires gouvernementales**

Loi de 1995 sur les économies
et la restructuration



Chair: Jack Carroll
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENT

Thursday 25 January 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Jeudi 25 janvier 1996

*The committee met at 1001 in room 151.*SAVINGS AND RESTRUCTURING ACT, 1995
LOI DE 1995 SUR LES ÉCONOMIES
ET LA RESTRUCTURATION

Consideration of Bill 26, An Act to achieve Fiscal Savings and to promote Economic Prosperity through Public Sector Restructuring, Streamlining and Efficiency and to implement other aspects of the Government's Economic Agenda / Projet de loi 26, Loi visant à réaliser des économies budgétaires et à favoriser la prospérité économique par la restructuration, la rationalisation et l'efficacité du secteur public et visant à mettre en oeuvre d'autres aspects du programme économique du gouvernement.

The Chair (Mr Jack Carroll): Good morning. Welcome to the resumption of clause-by-clause debate on Bill 26.

Just one housekeeping issue this morning: We have a new Liberal amendment 36C to replace the one you have in your binders. The clerk will hand those out.

When we adjourned last night, Mrs Caplan had just moved amendment 33A. We had not started debate on that amendment, so we will begin with that. Mrs Caplan has the floor.

Mrs Elinor Caplan (Oriole): I'm not going to speak at length to this amendment. It is a serious amendment and it relates, actually, to the previous amendment, which was defeated, but it can stand on its own. The previous amendment, as you know, was about process, including the requirement for district health councils to make recommendations prior to the powers of the minister being exercised.

This amendment puts forward, we think, very important requirements that the restructuring commission must put in place. For example, before they move to implement any hospital closures or amalgamations, but particularly closures, we think it's extremely important that the restructuring commission have human resource adjustment plans so that hospital workers will be able to know what the plan is and how it will affect them, and also the community will know how services are going to be provided. Without that transitional plan, you will have tremendous morale problems, and people who are worried about their own jobs are not going to be treating patients as well as people who have some surety and security about what the future holds for them.

We believe there needs to be a number of studies available and plans available before the restructuring commission should be allowed to use the unilateral powers the minister will give it. There's nothing in this legislation today that gives the community any assurance

that there will be that transitional plan that will let them know how services are going to be provided. There's nothing in this legislation that guarantees that there will be access to services, that the community impacts have been done, that there's been any kind of economic analysis to make sure the right decisions have been made—and remember, there are no appeals whatever to decisions by the commission, no right, no access to the courts.

We think all these things have to be looked at: alternatives to closures and amalgamations; the impact of reductions on services; the human resource plans are essential; and the community impact, that is, access to service, has to be in place. That's what this says. It's very simple. It makes bad legislation a little better. It's a damage control amendment that is essential to give the community some comfort that this all-powerful restructuring commission is at least going to have to look at these things before it makes a decision to close a community's hospital.

Mrs Helen Johns (Huron): I'd like to comment on this motion. The government believes this amendment is written in a very limiting fashion in terms of the ability of the minister to make decisions. We feel he has to have a broader base. We are unsure about all the implications of restructuring. We know it has to happen, we know we have to move forward with restructuring, but as different issues come from different areas across Ontario, we have to have the flexibility to be able to react.

In Bill 26, the minister makes directions under section 6 in the public interest, and we believe that is the way we should proceed. The public interest is further defined: It says the minister will make decisions in good faith, and that's based on reasonable expectations, reasonable factors, and he cannot use unrelated factors to make these decisions.

The government has tabled motions dealing with notice for both directions—closure, subsection 6(1), and amalgamation, subsection 6(3)—to allow hospitals affected to make representations to the minister and/or to the commission by giving them 30 days' written notice. We believe that is due process.

Also, the district health councils' duties are specifically outlined in the act. It says, "The functions of the district health council are to advise the minister on health needs and other health matters in the council's geographic area; to make recommendations on the allocation of resources to meet health needs in the council's geographic area; to make plans for the development and implementation of a balanced and integrated health care system in the council's geographic area; and, to perform any other duties assigned to it under this or any act by the minister."

We believe that many of these directions that you are suggesting should be handled in a limitation section are

being handled by the district health councils, by the planning they have already done in the community. We have asked them to do that. We do not believe there is a need to go back and look at all those details again, but to proceed forward and implement the system.

Mrs Caplan: I'm just going to sum up by saying that was incompetent doublespeak. Yesterday on the record you confirmed to us that the minister under this act has the power to act unilaterally, without referring to the district health councils, without requiring district health council reports. You objected to all those amendments that would have put any kind of process in place that would have given communities comfort that any of these things would have been dealt with. This is a last-chance effort to say that at least the restructuring commission should do it.

Mrs Johns, I don't accept anything you say. Let's vote on this. I just hope that the people of Ontario understand what you are doing. No process, no natural justice, no community involvement is guaranteed in this legislation—absolute dictatorial powers by the minister. Let's get on with the vote.

Mrs Johns: I disagree with you on that, obviously. We believe there is process happening. We believe we're—

Mrs Caplan: There's nothing guaranteed in this legislation. Show me where.

The Chair: Mrs Caplan.

Mrs Johns:—implementing local planning within the community. We are then taking the recommendations, if there are recommendations, from the community and moving forward with them. We are considering the local aspects, we are doing due process. We will get restructuring done in Ontario.

Ms Frances Lankin (Beaches-Woodbine): Mr Chair, I originally wasn't going to speak on this amendment. We went through this for an hour and a half yesterday on this very same section overall of the bill, where I had an amendment I put forward which would have added just the words "on the recommendation of the commission," just some tiny, little reference that the minister would have to look at. We hear this parliamentary assistant in answer to every question we put to her say: "We've got to restructure. We've got to do it quickly. We don't know what it's going to look like. We don't know how we're going to do it, but we've got to do it quickly."

I wish you had some depth of content to your answers that could give us some assurance that you have at least an inkling of where we're headed with health care restructuring in this province. Perhaps then it wouldn't be so imperative to us to know that the legislation actually gives some form and content to the direction you're going to head in. But you continue to ask for that blank cheque and you continue to refuse to tell us what number you're going to write in before you cash that cheque.

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These sections we're debating: One day you say, "We don't want to have it on the recommendation of the commission because there are circumstances where the minister will have to listen to district health councils," and the next day you say, "We're not going to listen to the district health councils because the minister's going to have to listen to the commission." You won't put any

of that in legislation. Don't you understand that what you're left with is an absolute, arbitrary, unfettered power given to the Minister of Health to do what he wants at any time to any services in the health care system in the province?

That's not what health care restructuring is about. That's about a government that doesn't know where it's going, that just wants to have the powers to deal with any crisis, any problem that comes up at any time, without consultation with the local community, without consultation with care providers, without consultation with consumers.

Quite frankly, I think it's of very little sense to continue to debate any sections in this with you because you absolutely stonewall any recommendations brought forward by the opposition. Here we're talking about an amendment which would simply have, as the content of what he has to look at, things like labour adjustment plans as you close hospitals. What's going to happen to the nurses? What's going to happen to the cleaners? What's going to happen to the physicians? You don't want to be fettered by anything. You don't want to be accountable to anybody. You don't want to have any planning that's in any depth.

Ms Johns, this is just an unsatisfactory bill, an unsatisfactory process, an unsatisfactory performance in terms of trying to explain where the government is headed with this legislation. I don't see a reason for us continuing to try to debate with you reasonable amendments when all you can say is no and the only reason you can give is because, "We have to restructure and we have to do it quickly," and you can't give any content in any answer to anything we put to you.

Mrs Janet Ecker (Durham West): I realize that every morning when the TV cameras show up we have to deal with the attempts by everyone to make the evening news, but I really believe that the attempt to say that the parliamentary assistant is not answering the questions—

Ms Lankin: On a point of order, Mr Chair: I take great offence at this member sitting over there talking about people getting upset because there are people from the public or people from the media here watching. If you recall yesterday afternoon when we were dealing with this very issue, when this room was almost empty, I took great offence at the positions being taken by the parliamentary assistant for the Minister of Health, her inability to answer questions, the fact that the minister won't come here and be accountable and yet he wants all the powers unto himself.

So don't start to try and play games because the cameras are on when you're speaking, suggesting that it is all because of media. I'm just so fed up with the arrogance of this government that refuses to listen to any suggestions from the opposition trying to make what we think is a bad bill a little bit better.

Mrs Ecker: Mr Chair, do I have the floor?

Mr David S. Cooke (Windsor-Riverside): On a point of order, Mr Chair: I expect you to rule. The member is not allowed to impute motives to other members, and that's exactly what she has done, and I expect you to rule her comments out of order.

The Chair: Ms Ecker, will you withdraw those comments?

Mrs Ecker: I certainly would not want to impute any motives here at the committee. We've been trying not to do that. If I have imputed motives to anyone here, I certainly withdraw. But I would also like to say that I believe the parliamentary assistant and the government have answered many questions. There have been honest disagreements about some of those answers, but we have put forward answers to these questions.

And I believe it is a little premature for the opposition to be expressing outrage about amendments we haven't even debated yet. We have been prepared to accept some opposition amendments. I'm sure there will be more that we will be prepared to accept. I really think it would be helpful if we could get on with debating those amendments so we can have the give and take that might actually lead to some improvements to the amendments to respond to the concerns we have heard from the presenters before us. I look forward to us getting on with this today.

The Chair: Thank you, Mrs Ecker. Any further discussion on the motion or on the amendments?

Shall the amendment proposed by Mrs Caplan carry?

Ayes

Caplan, Cooke, Lankin, McLeod, Phillips.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment does not carry.

Mrs Lyn McLeod (Leader of the Opposition): I'd like to table two motions with the committee and I would like to place those motions

The first motion: that the names of those individuals and groups who requested the opportunity to make presentations on Bill 26 to the standing committee on general government and who were denied this opportunity as a result of the government's decision to limit the time for public hearings be presented to the committee as an exhibit.

Mr Chairman, you're well aware of the numbers of groups that have expressed concern. Even today there will be at least three groups coming on their own initiative—journalists, seniors, nurses—to express their concern that we've not been successful in getting an extension of public hearings. I did not propose to place that motion again; it has been defeated on a daily basis in both subcommittees. But I do believe it's important for the conduct of this committee to do at least some justice to the public concern, to present to the committee that the names of those individuals and groups denied an opportunity to present be recorded. That, I understand, can be achieved by presenting it as an exhibit.

I have a partial list, and it is just a partial list, of the groups that have been denied appearing. I believe the clerk's office will have a complete list of those groups who sought presentation and who were denied presentation. It's a long list.

Interruption.

The Chair: I think you realize that that is out of order. Please take it down.

Mrs McLeod: No, actually, Mr Chairman, I did not realize it was out of order.

The Chair: I'm sure you do.

Mrs McLeod: I realize that a motion to have these groups present would not be considered by the committee, because it has been defeated on a daily basis, which is why I did not present that motion today. But I believe it's important that the names of those groups and individuals who had done the work to prepare presentations and wanted to be heard should be a part of the record of this committee's proceedings.

The Chair: Thank you. Any further discussion on the motion?

Mr Tony Clement (Brampton South): It's my pleasure to speak against this motion for the simple reason that the wording in it is inaccurate and incorrect and is revisionist in its history. In fact, the schedule of this committee was agreed to by all three House leaders and sanctified by the Legislature. It was not the government that drew up the order of this committee.

Ms Lankin: Point of order.

Mr Clement: It was in fact a three-party agreement by the House leaders. So the wording of the mover's motion is incorrect, and I—

The Chair: Excuse me, Mr Clement.

Ms Lankin: On a point of order, Mr Chair: You're a very fine Chair, but on a point of order you need to interrupt the speaker. Mr Clement, even though he can hear me, obviously won't stop.

I don't have a copy of the motion in front of me. I don't know the points he's making with respect to this motion. I would appreciate it if it could be circulated or re-read so we have a clear indication of what's being debated.

The Chair: The motion is being copied. Mr Clement had the floor. Did we want to wait until we have copies of the motion?

Mr Clement: I've now read it, and my objection stands, Mr Chairman. The words are seared in my memory.

Mrs Caplan: Day after day, we have asked the government to reconsider the fact that it has shut out hundreds and hundreds of presenters, people it has dismissed as "vested interests." It could not possibly have been contemplated, the numbers of people who would have wanted to be heard.

Mr Terence H. Young (Halton Centre): On a point of order, Mr Chair: I don't believe you can debate an exhibit, and this motion refers to an exhibit, so it's out of order.

The Chair: The motion is in order and it is debatable.

Mrs Caplan: Thank you very much, Mr Chair. The reason the motion is in this order and has an exhibit attached to it is because we were told that to read all those names into the record would take such a long time that we decided in the interest of just getting the point across to you that we would put it in the form of an exhibit before this committee.

There has been an unprecedented number of groups, individuals and people who wanted to present before this

committee who have been turned away. It is unprecedented. Nobody could possibly have contemplated how many people wanted to come before this committee. We have heard less than a third of those who wanted to be heard. You have shut them out.

When Mr Clement makes his defence, I would say to Mr Clement, I was at the meeting when Ernie Eves said he wanted this bill with no public hearings. If it hadn't been for the efforts of the opposition parties, we would not have had public hearings across this province.

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So let me tell you something. You are being so unreasonable in wanting to have all of this done, passed and finished without the hundreds of people who have expressed an interest to come before this committee and let you know what they think is wrong with this bill. If you do not let them be heard, they're going to make their voices heard. As our leader said, they're coming to Queen's Park to hold press conferences. They're coming to your members. They're coming to us to say, "Why won't they at least let us be heard?"

We have tried day after day to ask you to extend the public hearings, but we at least want you to know how those people feel and who they are. That's the purpose of this motion and that's why we hope that the committee members who have to go back to their ridings, committee members who we know were not briefed on this bill before it was presented—you didn't see it. You didn't know what was in it. You are just beginning yourselves to understand the full implications of this bill. So are the people in the community, and they demand to be heard. You've bullied them with this bill, you've shut them out and you're determined to ram it through. We're not going to let you do that without at least making sure that you know who you're slamming the door on. That's what this motion is about.

Mr Cooke: I have a question first, Mr Chair, that I would like to ask you and then I would like to speak to the motion, depending on your response. What is there that requires the approval of the committee, since the Conservative members obviously don't want the motion to carry? Is there anything that prohibits a committee member from tabling anything with the committee and then having it printed in Hansard? Could you not approve that as Chair of the committee?

Ms Lankin: That wouldn't stop Mr Clement from defeating this reasonable request. He would just do it.

Mrs Caplan: Absolutely.

The Chair: A member of the committee is entitled to file anything they want with the committee.

Mr Cooke: And then would that be recorded in Hansard?

The Chair: It would be entered as an exhibit in Hansard.

Mr Cooke: So, in effect, even though the Tory members would like to prohibit this from happening, it will happen because of the procedures in the committee. The exhibit will be tabled and will be on the record. The motion doesn't—

The Chair: The motion basically—

Mr Cooke: —wants it exhibited.

The Chair: That's right.

Mr Cooke: Okay. Mr Chair, just a couple of brief comments. I guess what your ruling, which is pretty logical, reinforces to me is the absurdity of the Conservative members, and particularly of Mr Clement, to come in here and say, "I'm going to vote against a motion" that says the Leader of the Opposition wants to table something as an exhibit. And we're supposed to take this process seriously when they come in here and they say: "We don't even want you to file an exhibit. We're going to vote against an opposition party from even filing an exhibit." They have come in here with their orders and they are acting like a bunch of robots to do whatever they think the government House leader wants them to do. That means voting against everything, anything, totally that the opposition parties suggest.

This is, to me, the most absurd action that I have ever seen in this place taken by a government caucus. Absolutely ridiculous that Mr Clement would come in here and say, "I don't even want that filed as an exhibit." Why don't you just do what you really feel you want to do, close the Legislature down for the next four and a half years, act like a bunch of Fascist dictators and run the opposition out of the province, because that's what this is all about. That's the way you behave, and I think this has hit new heights of ridiculousness.

Mr Clement: On a point of personal privilege: He's imputing motives.

Mr Cooke: There's no language I've used that's unparliamentary.

Mr Clement: I would request that he withdraw that remark. He's imputing motives.

The Chair: Mr Clement has requested that you withdraw your comments.

Mr Cooke: I don't believe there is anything that I have said that has anything to do with motives. I've described what I've said the action of the member is. There are no motives. It's very clear. I've said they're acting like a bunch of Fascist dictators. That's not imputing motives. That's a description of the behaviour I have seen here this morning.

Mrs Caplan: Now remember, I didn't say that; Dave Cooke said that.

The Chair: From the basis of a judgement standpoint in my position, I agree with Mr Cooke.

Mr Gerry Phillips (Scarborough-Agincourt): Just to speak on the motion, it is quite extraordinary. I think anybody who is watching this must be shaking their heads at the government. I think even the government members wish they could take back your decision, Mr Clement. Let's just review this situation. I think Mr Clement will change his mind before the debate is over here, but let's just review the situation.

The bill has an incredible impact on everybody in the province and you originally, as my colleague said, tried to pass it with no debate—absolutely no debate, zero debate, all done in two weeks. Through the efforts of the opposition, and I think a fair bit of public support, at least we had an opportunity for some groups to be heard. Now, we only heard, as we all acknowledge, from one third of the groups, and there are some enormously impressive groups that we never heard from. In fact it was only through our efforts at the last minute that many

of the mayors in the cities we were in were heard. They weren't even going to be heard. You look through the list of people who haven't been heard and it is an impressive list of public-spirited organizations in the province.

Mrs Caplan: That's right, public-spirited.

Mr Phillips: I absolutely guarantee that their briefs have not all been considered—absolutely guarantee it. But surely, as an absolute minimum, all this says is, "At least acknowledge the groups that presented briefs to us that we didn't hear; put it in Hansard so at least they can be aware that we got their brief, that it was part of at least the background record."

This is extraordinary. I hope the public all listen to this. What we heard from the government was, as soon as the motion was tabled, the first government member who spoke said, "We're against it." And then some members said, "We'd like to see the motion." So when they looked at the motion, "Well, we're still against it," even though they hadn't read the motion. All it does is say we will have as an exhibit the groups—

Mr Clement: It does not say that.

Mr Phillips: If you don't believe that's what it says—

Mr Clement: "...and who were denied this opportunity as a result of the government's decision...." That's what it says.

The Chair: Mr Clement, Mr Phillips has the floor.

Mr Clement: I'm sorry, Mr Chairman, you're right.

Mr Phillips: Excuse me, but I think the most we could get out of the government—and it was your decision, believe me. The NDP and the Liberals, as we've said every single day this hearing's been held, think the hearings should be extended. We have said that every day, and it has been the government members who have rejected that. So I will defend the wording of this motion because it's you, government members, who have denied the public the right to be heard.

Mrs McLeod: How can you deny what's fact? It's in the record.

Mr Clement: It's the House leaders' agreement.

Mr Phillips: If the public would listen to this, what the members are saying is that it was the House leaders' agreement. I will take us back to when you had the gun to our head. You were not going to have any hearings. We took the most extraordinary steps. My colleague Mr Curling took an extraordinary step that many of you called unruly behaviour, disrupting—hijacking Parliament is what you've said.

Mr Young: Well, it was.

Mr Phillips: "Well, it was." That's what he says.

Mrs McLeod: He still agrees with that. He's nodding his head.

Mr Phillips: You see, I think the public again should recognize that what the Conservative members are saying is it was disrupting Parliament. So we forced you to have three weeks of hearings. We clearly would have preferred more hearings. You know that, and to say different is—

Mr Young: You're on the record saying that was enough.

Mr Phillips: Mr Chairman, Mr Young is lying again.

Mr Young: Mr Chairman, on a point of order: Mr Phillips is using unparliamentary language. It's not the first time this week. We've been sitting, trying to listen.

We've been putting up with this abuse for days. It's getting a little bit ridiculous. We've heard about cartoon characters from Mr Cooke, cartoon characters from Mrs Caplan. We've heard unparliamentary language. Let's get on with the clause-by-clause, please.

Interjections.

The Chair: Excuse me. Mr Phillips, are you prepared to withdraw that?

Mr Phillips: The member said that someone in the Liberal Party said these hearings were enough. I don't believe that to be the case.

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The Chair: Mr Phillips, on the point of order, I did hear some unparliamentary language. I'd like to request that you withdraw that, please.

Mr Phillips: Well, I withdraw that he was lying. I will just say that what he said bears no relationship to the truth. I will continue, because what he said clearly is not true.

All this motion calls for is the tabling as an exhibit the list of people who were denied by the government the right to be heard. What could be more reasonable? But what it shows to the public is you're in here with your marching orders, reject everything from the two parties except a couple of amendments. Try and find somewhere in all of these amendments one or two of the Liberal amendments, one or two of the NDP amendments that you can revise and then support. At the end of the day, I will be surprised if they accept three NDP motions and three Liberal motions. I will be very surprised if they go that far.

But they won't even do what I think any reasonable person would say is, essentially, simply reasonable. So I would hope that the government comes to its senses, realizes it made a mistake in rejecting this motion and agrees to it.

Mrs McLeod: Mr Chairman, I hope we can get on to the vote on this motion. I accept the fact that Mr Clement cannot rewrite the facts of what has happened, in spite of his very selective recall. I would like to stress the fact that this is not a game. You will know that as I've sat on the health subcommittee for the two weeks of its hearings, I have consistently made an effort of tabling for the record any written presentation which was presented to the committee. I believe it's important that people who wanted to present have that noted in the record of Hansard.

I did not seek to read into the record today the names of the people who were denied opportunity to make presentation. It may well have been out of order in any event, but I did not want to delay debate. I simply wanted at least a partial list of those people to be exhibited, as the clerk indicated would be in order. I would hope it could be added to the full list that the clerk's office would have that we would not have, because ours was just a partial list.

I did not expect this to require debate. It's simply asking that their names be noted in the record in whatever way is in order. Surely, we can get on and vote on this. I can't believe that the government would have any hesitation with that at all.

The Chair: Any further comment?

Ayes

Caplan, Cooke, Lankin, McLeod, Phillips.

Nays

Clement, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The motion is defeated.

Ms Lankin: On a point of order, Mr Chair: I would just like to request of the Chair if he could seek from the clerk's office the list of those groups who applied to appear before the committee and were unable to because there wasn't sufficient time and provide a copy of that to all members of the committee, which I think then would be an exhibit that is tabled and would be recorded in the Hansard record.

The Chair: If that's the committee's wish, the clerk's office can do that.

Ms Lankin: Any member can make that request. I've made that request.

Mr Clement: We have no objection, Mr Chairman.

Mrs Caplan: That was the motion you just voted against.

Mr Clement: It was not. You are lying now.

Mrs McLeod: Mr Chairman, I do wish to place a second motion. I guess I'm pessimistic before ever placing it, because the government seems to believe that we are playing a game here and that's not the case. So if I may place this second motion in the hopes that this one would engender some serious debate. I move:

"That the government House leader be requested to seek unanimous consent of the House in order to amend the December 12, 1995, order with respect to Bill 26 in order to refer back to the committee on general government those schedules of the bill which were not debated in committee prior to the amendments being placed at 1 pm on Friday. Consent would also be sought to consider the remaining schedules in clause-by-clause review during the week of January 29, 1996, and to be reported back to the House on Monday, February 5, 1996."

Mr Chairman, I understand that this motion is in order because I had the advice of the clerk as to a way in which I could place this that would be in order. I do present it as what I believe to be, and I say to the government members in all honesty, a reasonable motion to present from this committee to the government House leader. It is not a motion to extend the hearings indefinitely or to defer voting on this bill indefinitely. It is a motion that reflects the fact that it has become only too apparent that we are not going complete any form of debate on this huge amendment package that's before us.

We've all seen just the size of the amendments that are going to have to be debated in committee. It was not possible; 141 of these are government amendments. You cannot do justice to debate on these amendments in a single week. It's become apparent to us at this point in time that there are going to be major schedules of this bill that will not be touched in debate at all, and that includes the changes to the drug benefit plan, the changes to OHIP, the way in which our health care is funded, the effects on physicians. It includes the entire municipal section that we may not get to, freedom of information,

pay equity, the Conservation Authorities Act. We've had witnesses at our two subcommittees over our weeks of hearings who have spoken to all these issues and their evidence should be part of the debate on the amendments.

I think if we do not take some more time to ensure that each of the amendments does receive some debate, we will have made the public hearing process meaningless. If we can seek unanimous consent of the House to vote Monday on all of those schedules which have been debated in committee and then to agree that we would return one week later—so there is a finite time attached to this—in order to consider the balance of the schedules which we would have then been able to debate that week, we could devote our time for the next day and a half to those areas which the government considers to be a priority for passage on Monday, although in fact a single week's delay would not have a significant impact on the implementation of any of the provisions of the bill.

I present this motion, Mr Chairman, in the sincere hope that the government that says that it has valued the public hearing process, that has listened to the people who have made presentations, would equally want to have a reasonable debate based on the evidence that we've heard over three weeks of hearings.

Mr Cooke: This motion is essentially the same as the motion we tabled that would ask for continuation of clause-by-clause and therefore an agreement on Monday that the bill be referred back to the committee to deal with the balance of the bill. I might say, in looking at the Liberal motion, that there is obviously a committee that has drafted this motion because there are three different handwritings that are used.

Mrs McLeod: It's tricky to get one that's considered in order.

Mr Cooke: But I think this is just reasonable. The government House leader and his staff must be watching these hearings and this process and they must understand that in addition to the hundreds of people who wanted to be heard who were refused, there hasn't been—and the Conservatives can say, "Well, it's because there's been procedural wrangling." That's simply not the truth.

The fact is that when we go through the bill, there's been some of that, but there's been primarily discussion on important parts of the bill. There have actually been, and I go back to the toll road discussion the other day, new aspects of the bill that have been revealed as a result of a discussion on the bill, and it only makes good common sense—a group of words that is rapidly becoming a phrase that should never be used in the province again.

But it would just make for good public policymaking to allow more time to properly go through this bill and review what the government is attempting to do so that there's a full understanding, I would argue, not only on this side but over on that side as well.

I think what has become painfully obvious in the last couple of days is that the parliamentary assistant on the health side, who's been given, I would say, the horrible job by the Minister of Health of coming forward and defending a bill she had nothing to do with, just as all the Tory committee members here weren't consulted on this bill; there wasn't a caucus meeting on this bill ahead of time. They were just told: "Go into the House, vote in

favour of it. We're running at 53% in the polls. You got elected because of Mike Harris and therefore you do what Mike Harris tells you to do and the hell with democracy in the caucus, let alone in the province."

1040

I think this would be a pretty positive sign to the province and to the Legislature that there is some understanding about the democratic process in the Conservative caucus. Then, of course, it would be up to the government House leader and up to the cabinet itself to decide whether they were prepared to amend the motion. That could be done. If this motion were passed—I can certainly speak on behalf of my caucus—I'm prepared to meet with Mr Eves in the next hour, this afternoon, tonight, tomorrow morning, to discuss this. I'm sure the House leader for the Liberal Party would be prepared to do the same thing. We could come to an arrangement on this in the next few hours to have this properly dealt with.

We're not talking about a huge delay. We're talking about proceeding with certain parts of the bill and then a delay that would be a matter of a few weeks. I doubt if that is going to make a big difference, other than a positive difference, in developing and passing laws in a proper, democratic way.

Mr Clement: I would speak against this motion. The mover, I believe—

Mrs McLeod: Do you want to think about it before you actually vote against it?

Mr Clement: I can actually think pretty quickly, Ms McLeod. Thank you for your advice.

The mover of the motion did mention game-playing, and my only retort to that would be perhaps there are games within games. The mover of the previous motion knew full well that the list of persons who desired to speak was a matter of public domain in the Globe and Mail.

This is now Thursday. We've spent the first 12 hours of this committee debating motions before we even got to clause-by-clause in schedule A. We spent one hour yesterday debating whether the campaign manager of the Progressive Conservative campaign should be required to testify before this committee. That was moved by the Liberals, I believe.

The fact is that nothing prevents any House leader from raising a matter with another House leader, and if the House leader for the Liberal Party of Ontario wishes to raise something with Mr Eves, I wish him Godspeed; similarly with Mr Cooke. But I feel that this committee has, number one, tried to deal, on our side, with the clause-by-clause as expeditiously as possible, while still allowing for meaningful debate, and I do not feel at liberty to break the House leaders' agreement. We prefer to stick to the deal that was arranged by all three parties to give the time that the parties felt was necessary for public involvement.

But ultimately we, as legislators, have to legislate. We have to get on with the job of dealing with the chronic problems in the province. Even delaying for a week, by my calculations, if we are spending \$1 million an hour more than we are taking in as a government, that costs us \$168 million, which I would prefer to spend on health care. I cannot in good conscience support this motion.

Mr Tony Silipo (Dovercourt): I've expressed before in this committee the sense of frustration I feel as we're going through this process. I have to say, I sense it is shared by even some members of the government side. I'm flabbergasted by the kind of stonewalling we continue to see by the government side, expressed more often than not by Mr Clement on behalf of the government, without so much as a pause to reflect upon what they're doing, even though there has been instance after instance where they've come back to regret the steps they've taken.

I would have thought that on a motion like the one before us from the Liberal caucus, which, as Mr Cooke indicated, is very similar to one we had tabled, which simply says that taking into account the fact that we will not get through this bill—even if we had proceeded at a much speedier rate, we would not get through clause-by-clause of this bill, given the significant amendments from the government, let alone those from the opposition. We will be fortunate, I suspect, if we get through the rest of the health portions of this bill by 1 o'clock tomorrow, and there are other significant issues, as significant as the health pieces are, that we will not have a chance to look at.

What this motion is saying is, allow us an additional week so we can get through those sections, so we can debate the amendments. It doesn't even deal with the problem we have put before the committee day after day with respect to the hundreds of people who wanted to speak to the committee who didn't get a chance to speak. We're not saying, let's go back and have more hearings. We're saying, let's give the members of this committee an opportunity to go through the sections of this bill.

All this would cause is a delay of one week in the government's time lines to get the bill passed, and even that they find unacceptable. It just begs the question, what is acceptable to them? The answer, I think, is nothing. They keep talking about their willingness to accept amendments. From the combined amendments presented by the Liberals and the New Democrats to date, one amendment—one amendment, Mr Chair—has been accepted by the government.

Mr Cooke: After they neutered it.

Mr Silipo: And that's after they made significant changes to it.

Where's the openness? There is clearly no willingness to listen at all. There was clearly no willingness to listen to the public, there's no willingness to listen to any of the amendments we're presenting, and there clearly is no willingness to be flexible at all, on something where they could show some sensitivity to the screwups they've caused, to the attack on the democratic process they've caused as a result of the way in which they've proceeded with this bill.

Here's a great opportunity for them to say, "We think a little bit more time is okay," and Mr Clement comes in and says, "No, we're just not going to vote for this." I can just imagine the instructions and the briefing sessions the government members came into this committee with, particularly Mr Clement as the government whip. I can just see them, "Just go in and say no; until we tell you

otherwise, anything that comes from the opposition is no," because that's all we've seen so far.

I say to the government members, they've got the majority and they will undoubtedly do what they want to do. But I also say to them that they will regret these actions. I would be interested to know if, a year from now, many of those same members sitting in this room will not, more openly than they are saying today, also admit that they regret the actions they're taking here today, because I think they will. They will discover as they go along that what they are doing here today and what they have done by the way they've handled this bill will come back to haunt them. It will not be something they can shake off by simply ramming this thing through as quickly as they can. They will not be able to shake off the affront to the democratic process and the affront to the people of the province that they have demonstrated throughout their handling of this bill and are demonstrating yet today on what is a very reasonable amendment being proposed to the process for this committee.

Mrs McLeod: Mr Clement must be getting rather desperate in trying to defend the indefensible when he trots out the old line, "The debt is going up by \$1 million an hour." I defy Mr Clement, or any other member of this committee, to find one single part of this legislation which would have an immediate impact, on Tuesday morning, January 30, if it is passed on January 29. A week's delay is not going to affect the implementation and therefore your ability to go out and make your cuts as fast as you want to and as unilaterally as you want to, because at the end of the day we know you're going to give yourself those powers.

All we are asking for is that some justice be done to the presentations that have been made to this committee through some reasoned debate over the course of a single week, and I cannot believe that you would continue to find that so outrageous that it didn't even deserve a moment's consideration. I am becoming more and more convinced, not suspicious, that it is the Conservative campaign manager, Mr Long, who has written the script for this committee before it ever sat down, that he's saying day after day: "Don't consider a single moment's delay. We can't afford to be out there one moment longer, because every day we're out there we're getting beaten up. If you let anybody else come and talk to this committee or if you let any other debate take place, it's going to become obvious that this is bad legislation and we're going to hear only from people who are worried and who are ready to criticize us. We're getting beaten up on so many other fronts that we can't afford to get beaten up on this one any longer, so get us out of this as fast as you can."

Make all the statements you want about how open you are, even though you were forced into these hearings. Make all the statements—I've listened to you day after day say to witnesses: "We appreciate your presentation, we're glad you were here, thank you for coming. I can assure you the Conservative government is listening." You won't give them a single week longer, you won't let others come, and you won't even let us take one week longer to at least debate the amendments you've put forward. Even your own amendments are not going to get

debated. You simply want to ram your amendments through the way you wanted to ram this legislation through.

Mr Chairman, the reason we are spending time debating proposals for procedural change is because we feel really strongly about doing some justice to the public consultations we fought so hard to get, because we believe this is bad legislation and that in a debate we can hopefully make the government realize it needs changes.

I think we feel as though we had some success when we see the government bring forward 141 amendments. We want to consider those amendments; we have put a lot of work into our own and we'd like to consider those amendments as well. We believe they respond to concerns that were presented to our committee in the public hearings. The only reason we debate them so long is because the government seems to think that anything we propose is a game and outrageous, yet they want to challenge our right to do it.

1050

Mrs Caplan: I think this amendment is very reasonable, and people should understand what it is we're attempting to do. We're saying that the amendment process, the clause-by-clause process, is extremely important. This is the first opportunity we have to have any questions answered, to have any thoughtful debate.

There have been very serious and important issues in the amendments that have been put forward that we have discussed. We've had to and fro; we've had the opportunity for the government to overrule us time and time again. But what we're saying is that those clauses that have been finished can go forward to the House for a vote. For those we haven't dealt with, we're asking for one more week so we can have continued thoughtful discussion. While we believe this is a bad law, it is made better, even only slightly, by the scrutiny, the amending process.

In support of that argument, I want to say, particularly to the new members of the Conservative caucus who are on this committee, that I've been here 10 years and I have served in opposition and I have served in government. I fundamentally disagree with what Jim Wilson said the other night on CBC when he said that everything he did and said in opposition was simply pandering.

I want you to know that I don't think that is what—I was appalled when he said that. I want to assure the members who came to this House to be lawmakers and to make good law—and when they ran, they didn't know they were going to be in government. I have always believed that whether you sit in government or whether you sit in opposition, you can influence and improve proposed legislation. As a member of the government back bench, you can and should be able to do that. That's what your caucus process and your committee process internally is about.

One of the places you can do that is at committee. We have always talked about the need to have thoughtful consideration and real participation from all members of the committee. I'm not saying that today because I'm a member of the opposition. I'm going to give you an example of where I did that when I was in government, so I'm not asking you to do anything today that I didn't

do when I was in government. That counters Jim Wilson's point about behaving differently in opposition than in government. I want you to know I have been absolutely consistent.

When I brought forward the Independent Health Facilities Act, it was, I would suggest, significant legislation. But I'll tell you, it was not as significant as the health policy implications contained in Bill 26. What was the process I undertook with that bill?

First, I put forward the intention, the goals and the objectives, clearly stated. Second, there was no time allocation on that bill. Third, I was at committee every single day to hear the public representations and the deputations that came before that committee.

At the end of that process, when there was a significant amendment placed by an opposition member that I wanted to accept, we held an additional week of public hearings to allow those who would be impacted by that amendment to come and have their say. I was there for every day of those public hearings. We sought thoughtful amendments and accepted amendments, substantial amendments, from the opposition parties, and technical suggestions and changes to make that as good a law as it could be.

I was there for every day of clause-by-clause debate. That was not unusual. What is unusual is to have substantial law where there is no discussion of goals and objectives.

Mr Cooke: How can you remember this? This is part of the 10 lost years.

Mrs Caplan: This is important history for the new members who came here to make good law, whether in opposition or in government, and who are listening to a very cynical, petulant hothead by the name of Jim Wilson, who had the gall to go on TV and tell people he never meant anything he said when he was in opposition.

Well, I want to go on the record today to say I meant everything I said when I was a minister, I meant everything I said when I was a member of the government back bench, and I mean everything I say when I am in opposition. I am not saying anything today that is any different from the things I have said in this House over a 10-year period. People have to know that if they're going to believe any of us have any integrity. And there must be integrity in this process.

All we're asking for is that we take the motions that have already been dealt with, those sections of this bill, and deal with those in the House. I'll vote against them; that's my right as a member. But it's also my right, as a representative, to have a chance thoughtfully to review the amendments you have placed to this bill.

All we're requesting today is an opportunity, a recommendation from this committee, that the government House leader meet with the opposition House leaders to discuss a process that would allow for one more week of thoughtful debate, consideration of the amendments you have placed.

That is reasonable. It will lead to better law. If this bill had passed as you had intended before Christmas, we would not have had the chance to have even the amendments that have been put forward. You know this process works and is important. You, the members of the back

bench, the new members of this Legislature, if you're ever going to make a difference in this place, surely to God you would want to have a chance to debate your own amendments as well. That's all we're asking for: a little more time to give some thoughtful consideration to serious amendments that have serious public policy implications.

I today offer the Minister of Health my help, my advice as a former minister. I believe I can make a contribution as a member of the opposition to improve even marginally some of the provisions of this bill. I am not here playing games and I'm not here to be confrontational. I believe in the committee process, and I'm asking you, as members of the government, to help us all make a difference in this place by giving this the consideration it needs.

Mr Phillips: The motion is so eminently reasonable, it really is. For the government members, think back now and try to recognize—you're eventually going to have to defend this decision. Even when you agreed to the time for the clause-by-clause, what you told us then was: "We don't think there'll be any amendments. If there are, there'll be one or two." When you set the time for this, you had to believe, because your bill was so good that you wanted no debate on it, there were going to be very few amendments. Well, you can see you've got 141 amendments now. If you believed one week was all that was necessary to debate the four or five amendments you planned, doesn't logic tell you that maybe we may need a little more time to debate the 141 amendments?

I know the problem you're in. You're here trying to cover up, frankly, the incompetence of the ministers. My view is that come Friday night at 6 o'clock, they better hold, over in the Premier's office, a very nice reception for you people. You'd better get the recognition you deserve, because you're being made to look foolish, personally very foolish. Now, luckily only Mr Clement talks, so not many people at home see you on TV. This Mr Clement's carrying the can here. But you really look very foolish, and, as I say, I think whatever the hero badges are for the revolution, you better head over there at 6 o'clock to the Premier's office and—I watched the civil war thing a little bit—old Stonewall Mike will have some hero badges for you and thank you very much for carrying the can for the ministers.

1100

Mr Clement: I should be so lucky.

Mr Phillips: Well, you should be so lucky, Mr Clement. There has to be some reward for you, because in all seriousness, you're made to look personally incompetent because you're carrying the can for ministers who refuse personally to take responsibility.

So we've got a motion that any sensible person, if they had the authority, would support, and you're going to have to defend to the firefighters, to the police, to the municipalities, to the public sector pension people, all the ones we will have no time to debate your amendments, why you wouldn't agree to another week of hearings.

When these times were set, surely you're not telling us that you knew there'd be 141 amendments. Surely you yourselves have to acknowledge there are far more

amendments, far more changes to this bill, than you had ever contemplated.

But, as I say, the problem you face is you're under marching orders. You're the ones that are going to look foolish. You'll get some little reward Friday afternoon when Stonewall Mike has his reception and pats the Chair and the others and, "You did a fine job of keeping us away from the heat." But you are looking very foolish on this, Mr Chair, and I would hope the government might recognize that maybe you personally can save a little bit of face by adopting what is, by any definition, a reasonable amendment.

We'll pass the part of the bill that we've covered on Monday; the rest of the bill we will set aside time. And we'll need more time, Mr Chair, than just 10 till 6. We'll need more time next week to make sure we've got adequate time for reasoned debate on it. But Mr Clement, under orders from Stonewall Mike, is going to, I gather, instruct the government members to vote against what I think the public would say, "Well, for heaven's sake, this is absolutely reasonable."

The Chair: Mr Patten.

Mrs McLeod: Who is running a leadership campaign here? I'm really disturbed by that comment.

Mrs Johns: Pardon me?

Mrs McLeod: I heard your comment about leadership campaigning, and I'm just disturbed that that should be—I'd like to know who she thinks is running a leadership campaign here.

The Chair: Mrs McLeod, Mr Patten has the floor.

Mr Richard Patten (Ottawa Centre): Mr Chairman, thank you for the opportunity to speak to this motion. In the context of the big picture, it seems to me that this is a reasonable request. I'm quite aware that the problem we have here, of course, is that the decision-makers are not at the table, that you really are representing the ministers and those who have made this policy and that your job will be assessed on how closely you stood and protected what was presented. I can understand that. That's part of the responsibility.

But at the end of the day, six months from now, when the bill is through and the implications are becoming apparent to those affected, I'd like to point out one dimension that you're going to have to face, and, Mr Clement, I'd like to make this point to you in particular. Mr Chairman—

Mr Cooke: He's talking to his arrogant sidekick.

Mr Patten: He's listening for his walking orders, I suppose. But I did want to make a point, and I'd like, if you don't mind, to have you listen to it.

The point is this: The ramifications of the powers of this bill for the Minister of Health I believe are unprecedented, and I'd be interested to hear from Ms Johns later on to know whether there is one Health minister in all of Canada that has anything resembling the kinds of powers that this Health minister will have. We've made a few calls out of my office, and the indications are, in three provinces, that certainly is not the case. I wish I had the time to complete it. But I would like to ask whether in fact it is true.

I would suggest that it isn't, and because it isn't, there is a very dangerous precedent that is being set here and

that will be set on the 29th. I'll come back to relate it to this motion, but I do want to make this point because this is a very important backdrop, because what will actually happen, and I'll say this to my colleagues on the government side, is that by moving in this direction without any qualifications or any accountability—I use the word "accountability", not "responsibility"—for the Minister of Health, you will be diminishing your own role and your own potential influence, you who are not in cabinet, you who are not members of the executive council. It has that kind of implication.

So in six months, when people start to say, "Hey, I didn't realize how we're being affected here, and I didn't hear this discussed at the committee. How come?" "Well, we ran out of time." "Well, were these not proposals or amendments that were put forward by the government side?" "Yes, they were." "Well, why did you think it was not necessary to consider some of these when we heard from other members of the Legislature that they were important, that they were pointing out some things that needed to be reviewed and discussed and debated," while I'm not a prophet, I would prophesy, and I think it would be fairly safe to prophesy, that given the overall extent, given the implications, the time that's required, the complexity of what we are charged to do in such short order, that the implications of that go far beyond a particular service at a particular time, we're really talking about an impact on the Legislature itself, the powers of this government.

You know, our parliamentary system is based on precedents. We're setting a very serious precedent here that I think will have ramifications beyond just the powers of the Health minister, because next week the Minister of Municipal Affairs will say, "I'd like to have those powers too," or the Minister of Environment say, "I'd like to have some of those powers too, to do basically whatever is expedient to be done." In terms of responsible government, it will be a sad day on the 29th when this goes through.

In that context, it seems to me that this motion is not an unreasonable one, to be able to say, "Yes, we did take that extra time." I would challenge that it's going to be any more costly in terms of addressing the deficit, but we certainly want to make sure, and I'm sure you want to feel good when your constituents ask you, "How did you vote when you were asked to have an opportunity for the committee to review recommendations and amendments that you put forward and you didn't want to do it?"

The Chair: Any further discussion on Ms McLeod's motion?

Ayes

Caplan, Cooke, Lankin, McLeod, Phillips.

Nays

Clement, Ecker, Johns, Maves, Sampson, Tascona, Young.

The Chair: The motion is defeated.

Mr Rob Sampson (Mississauga West): On a point of order, Mr Chairman: If I may, on Tuesday I was asked to obtain a letter from the Information and Privacy Commis-

sioner with respect to schedule E and subsequent discussions with respect to schedule E and the ministry in regard to the transponder issue. I have that letter and I'd like to table it now, if I can, with the clerk.

The Chair: Thank you, Mr Sampson.

The next amendment that we are to consider is page 33, and it's a New Democratic Party amendment. Oh, Mrs Johns, sorry.

Mrs Johns: I have six government motions that I would like to table with the Chair and have them distributed to the committee members, please. They're replacement motions.

Interjection: They're amendments to amendments is what they are.

Mrs McLeod: Six more? Were there drafting errors in the first ones, or is this a recent discovery of a problem?

Interjection: Improvements.

Mrs McLeod: Exactly why we need—

The Chair: Thank you, Ms Johns. Ms Lankin.

1110

Ms Lankin: Mr Chair, did you indicate that we were proceeding to motion 33? Okay.

I move that subsections 6(5) and (6) of the Public Hospitals Act, as set out in section 6 to schedule F of the bill, be struck out and that the following be substituted:

"Amend, revoke direction

"(5) Upon the recommendation of the commission, the minister may amend or revoke a direction made under this section.

"Recommendation of commission

"(6) A recommendation of the commission referred to in this section shall,

"(a) be based on consultations between the commission and a district health council and on the advice and recommendations the commission received from the council as a result of the consultations;

"(b) include a labour adjustment plan for all health care workers, including physicians, who are affected by the proposed hospital closure or amalgamation or the proposed reduction in services; and

"(c) include a report prepared by the commission which sets out the commission's reasons for the decision.

"Limitation

"(6.1) At least 30 days before making a direction under this section, the minister shall table the recommendation in the assembly and shall hold public hearings with respect to the proposed hospital closure, amalgamation or reductions of services."

Very briefly, Mr Chair, I think you can see that this continues the theme that I have been speaking to under this section in which I believe the minister, in using the powers he sets out for himself, should have some discretion and some fettering, and that should include a report from the commission. I believe the commission, as is the process Mrs Johns has indicated over and over again would be what happens in reality, should consult with district health councils. Any plan to merge or close or amalgamate a hospital should have a labour adjustment plan for all health care workers who will be affected that can be tabled, and the commission, in making a report to the minister, that report should be set out and the reasons should be set out for their recommendation.

The limitation, which gives a 30-day period before making the direction under this section, the provision for tabling a report in the Legislative Assembly and the opportunity for public response to that where there's going to be any direction to close or amalgamate a hospital or reduce services, does not add any time to the process as envisioned under the government's amendments. You will know that the government has indicated that it would provide a hospital with 30 days' notice before taking steps to implement any direction under section 6 with respect to closures or amalgamations of hospitals. This is the same 30-day period. We're saying when notice is given to the hospital, similar notice of intent to use the powers under this section should be tabled with the Legislative Assembly, and that would provide an opportunity for public scrutiny and public response to the government during that same period of 30 days that it has provided to the individual hospital.

Mr Chair, if it facilitates anything at all, I would appreciate knowing from Ms Johns whether she intends to support this amendment or any version of this amendment or to table anything that will address any of my concerns. If the answer to that is no, then I'd say just move on with the vote and let's stop playing games with this.

Mrs Johns: First of all, when we get to section 9, we intend to introduce a motion that will take into effect what Mrs Lankin—Ms Lankin—has been requesting. I guess I probably should read that to see if that helps in some regard:

"I move that section 6 of the Public Hospitals Act, as set out in section 6 of schedule F to the bill, be amended by adding the following subsection:

"Matters to consider

"(10) The minister, in issuing directions under subsections (1), (2), (3) or (5), shall have regard to the district health council reports for the commission to which the direction relates."

Ms Lankin: Mrs Johns, could I just ask you, I haven't seen your amendment, but I presume that you actually meant to say "reports for the communities" to which they relate, not "the commission" to which they relate.

Mrs Johns: I'm sorry. Thank you.

Ms Lankin: Just a guess on my part, given that it's the same wording of my motion for the fettering of the commissioner.

Mrs Johns: Thank you once again for keeping me on track. So "reports for the communities to which the directions relate."

Mr Sampson: Mr Chair, a procedural order: Do we now have two motions on the floor?

The Chair: No. In responding to the question, Mrs Johns was just telling Ms Lankin what we were going to deal with later on, because I presume that has not been tabled.

Mrs Johns: That's right.

Mr Sampson: Okay, I'm sorry.

Mrs Johns: The minister has clearly said that voluntary agreements work best, but implementation and restructuring are complex and frequently they run into roadblocks. The commission will be able to overcome some of these roadblocks, we believe, but we have to

have effective policies for planning and we need to have a process to be able to implement that. We've been talking about this for the last two or three days; I've been saying the same thing. We believe this commission will be the independent body that is able to do this.

What we find in this motion that we have problems with is that you are suggesting you're taking the minister's powers away. You're asking for more consultations, even after the district health council has done its job, by saying we shall hold more hearings. We believe that the district health council has consulted with people. They have found out the problems that are involved with the local community, and they are bringing them forward to the minister through their district health council report, which we have said that the minister will have regard for and that the commission will have regard for as they make decisions about restructuring in Ontario.

The Chair: Ms Lankin? Obviously we don't want to move right to the vote.

Ms Lankin: I actually think we should, because I think that that answer once again shows a complete lack of understanding of what we're attempting to do in the amendment and I think that that answer meant that Ms Johns was not prepared to accept any of the elements of this amendment. If she's indicating to me that the government caucus is once again simply going to vote against an opposition amendment, if that's what it is, then I'd say, let's just move to the vote. Let's stop debating it.

The Chair: Mrs McLeod, did you have a comment on that?

Mrs McLeod: Again, we were ready to support the amendment without debate, but, Ms Johns, I have to tell you that if what you've just said suggests that the process that is intended, and your resistance to all of the amendments that are being put forward, is to suggest that the district health council report, which we do want taken into consideration, would be considered without there having been any public hearings in a community because that would be a further waste of time, then I am going to fight for a due process being recognized in this legislation if it takes us until Friday at 1 o'clock.

The Chair: Thank you, Ms McLeod. Any further discussion on the proposed amendment?

Ayes

Caplan, Cooke, Lankin, McLeod, Phillips.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Young.

The Chair: The amendment does not carry.

It's 20 after 11. We'll have our customary morning recess for 15 minutes.

The committee recessed from 1116 to 1135.

The Vice-Chair (Mr Bart Maves): Welcome back. I'm Jack Carroll. I've found the fountain of youth and turned the clock back a few years. We are now ready to move a Liberal motion, I believe from Mrs Caplan, motion 33C.

Mrs Caplan: This is simple and clear. It's short and I'm going to speak to it very briefly.

I move that subsection 6(8) of the Public Hospitals Act, as set out in section 6 of schedule F to the bill, be struck out and the following substituted:

"Powers of board

"(8) Despite the letters patent, supplementary letters patent or bylaws of a hospital, the board shall have such power to carry out a direction under this section as may be specified in the direction but such powers shall not contravene the provisions of any other act."

The reason we need this new amendment is that it does three things potentially that I want to make sure it cannot do. One, I think the amendment in Bill 26—

Mrs Johns: On a point of order.

The Vice-Chair: Order. Excuse me, Mrs Caplan. That's not the motion that I have.

Mrs Johns: That's not the motion we have.

Mrs Caplan: It's 33C.

The Vice-Chair: That's right. Mine ends at "specified in the direction." Staff's ends there too.

Mrs Caplan: Okay. Let me re-read that. It says:

"(8) Despite any other act, letters patent, supplementary letters patent or bylaws of a hospital, the board shall have such power to carry out a direction under this section as may be specified in the direction."

I believe we had amended that to include "but such powers shall not contravene the provision of any other act," and so I'd like to add that as a complementary amendment. I'll give you the new motion.

Interjection: Let's set it down.

Mrs Caplan: No, we don't have to set it down. It's just adding those few words, unless you want to set it down.

The intent of this motion is that the minister, by direction, should not be able to force a hospital board of volunteers to override a law, in other words, to break the law. One of the questions I'd want to ask of the parliamentary assistant, and this is just one example, I believe these are issues of natural justice so that the minister cannot give a direction that would override a law and force a board to override a law.

Just one example, and this is an example: There are some hospitals that have agreements that do not allow contracting out of lab testing procedures. Does Bill 26 allow the minister to force a hospital board or permit a hospital board to override such an agreement without due process or discussion, just by direction of the minister? Would that be permitted in Bill 26 as it stands?

Mrs Johns: This is an issue of corporate law and I'd really like to defer this to Mrs McKeogh, please.

Mrs Caplan: I understand that and I guess as a question of policy, before the lawyer answers the question, I want to know if it is the policy intention of the minister that Bill 26 allow those kinds of overrides of existing statutes. Is that the intention, including labour law, the collective agreements and that sort of thing? Is the policy intention of the minister that Bill 26 can override those kinds of agreements and potentially laws?

Mrs Johns: As I said, I'd like to have the lawyer explain it. I would say before I hear her, and it will be subject to what she says here, that my answer is no.

Mrs Caplan: I just want to be clear. The intent is that those existing agreements cannot be overridden. I'd like the answer from the lawyers.

Mr Clement: Could Elinor just read the last phrase that she added one more time, so I can write it down?

The Vice-Chair: We're having copies circulated.

Ms Carole McKeogh: The intention of this subsection 6(8), "Despite any other act, letters patent, supplementary letters patent or bylaws, the board shall be deemed to have the unrestricted power to carry out a direction under this section," is focused on the power of the board to act. The power of the board to act may be restricted by other acts, letters patent and so forth, and the specific issue that may come up is a restriction requiring special approvals for the board's actions by members of the corporation.

Although the board generally governs and manages the corporation, provisions in special acts, the Corporations Act or letters patent or bylaws may state that in respect to particular actions by the board, an approval by the members, either a unanimous approval or approval by special resolution, is required. This section is intended to make it clear that the board is not restricted in its ability to manage and govern the corporation.

Mrs Caplan: I know there's another question that Mrs McLeod wants to place, but I would like to ask some very specific questions about what Bill 26, as it now stands, might permit, and then see if this motion could be amended to deal with those issues, if in fact it does what I suspect it might be able to do.

The Vice-Chair: Excuse me, Mrs Caplan, I just want to confirm that everyone has the amended amendment which reads from the second last line, "in the direction," and then added on that is, "but such powers shall not contravene the provisions of any other act." Does everyone have that now?

Mrs McLeod: On a point of order, Mr Chairman: If I could just point out that without those last words there is no amendment because it was exactly as it was written in Bill 26, so those last words are the amendment.

The Vice-Chair: I just want to find out that everyone has that now. Thank you. Go ahead, Mrs Caplan. I'm sorry for the interruption.

Mrs Caplan: Thank you. The question that I posed, for example, Carole, does Bill 26 permit the overriding of collective agreements?

Ms McKeogh: We don't think so. We think it would have to be worded more clearly to override collective agreements. This section is aimed at the capacity and powers of the board.

Mrs Caplan: Does Bill 26 permit the minister to give the board a direction that would then override a hospital bylaw?

Ms McKeogh: Yes. The bylaw in respect of restricting the power of the board to act, to govern the corporation.

Mrs Caplan: Does it give the minister the power to direct a board to take an action that would override any existing statute?

Ms McKeogh: In so far as the statute would restrict the capacity of the board to act. As I say, the intention is not to—

Mrs Caplan: Is that a yes? The answer's yes in so far as it would restrict—

Ms McKeogh: The capacity of the board to act.

Mr Cooke: What does that mean? Just put it in plain English.

Mrs Caplan: Give us an example, Carole.

Ms McKeogh: As I say, the specific issue is restrictions on the board's capacity to act by way of requiring approval by members of the corporation, by way of special resolution or otherwise. Alternatively, the bylaws could provide that the board simply is not permitted to make certain types of decisions, that the members reserve those decisions for themselves.

Mrs Caplan: I guess I want some further clarification, if you could give us an example of the sort of thing, because the way I read this, and this is the concern that I have that you've confirmed, is that a voluntary board of governance that is liable—under the Corporations Act they have liability as directors—that's correct, isn't it? They are fiscally responsible. They have all the responsibilities as that board under the hospitals act.

Ms McKeogh: They do have protection from liability under the hospitals act, but yes.

Mrs Caplan: But they are a voluntary board of governors and could be directed by the minister to take an action that would override a law, or a bylaw of the hospital, or—and it's undefined as to what the intent and purpose of this is. I'm trying to really understand, because when I read this alarm bells went off in my head because I think this threatens voluntary governance.

Why would any person want to serve as a volunteer on a hospital board if the minister could force them to override a law or a bylaw of their own hospital? I see that as the threat to voluntary governance. I also see it as the ability of the minister to micromanage. If he could force them to override a bylaw with this, he could also force them to write a bylaw, even though in another section he has taken out that explicit power. So implicitly here by overriding a bylaw, it's in effect changing the way the hospital would operate and function and be managed. Am I stretching it or is that possible?

Ms McKeogh: I don't think this section would authorize the board to write a bylaw—

Mrs Caplan: But it would override an existing bylaw.

Ms McKeogh: As I say, the section is aimed at the capacity and power of the board to manage, and if the bylaw restricted the board's power to do that by requiring approval by the members by special resolution, it would override.

Mrs Caplan: The third area of concern, which is the natural justice argument: Often those bylaws establish due process within the hospital corporations. Is that fair?

Ms McKeogh: Yes.

Mrs Caplan: So if you were overriding a bylaw on the direction of a minister, they could force a board to do away with all of the natural justice provisions of due process that are in those hospital bylaws.

Ms McKeogh: I don't think so. Again, it's a question of having the capacity and power to act. In regard to the capacity and power to act, as I say, we're concerned about restrictions by way of requirement either for members' approval or that the capacity has been taken out of their hands completely.

Mrs Caplan: I don't want to challenge, get into a thing of, "I'll get another legal opinion"; therefore, I'm concerned about your words, "I think," because what you've told me is that this gives the minister the power

to force the board to override its own bylaws. We know that bylaws set out all of the due process and what I call the natural justice provisions of how they treat their employees, their doctors and others. Those are set out by hospital bylaw. So while it may not be the intent—I'm not questioning the intent—I'm saying in practice this section could force the board to wipe out all of those protections that they have built into the development of their bylaws.

Ms McKeogh: That's not my view, but in any event, the direction would have to state that the board is to do that, is to override the natural justice and so forth. That's not the type of direction that's contemplated here; it would be a direction to close, to amalgamate, to transfer services.

Mrs Caplan: It may not be the action that's contemplated, but I think you would agree that that action is possible, especially when you say it may not be contemplated. We know that in other sections of this act the minister has already wiped out due process within the hospital context when it came to privileges of doctors and those that were going to be impacted by possible closings, so I don't think your words give much assurance to those out there who have seen actions taken in other parts of this bill. I read this section of the bill as putting the minister above the law, not only the bylaws of the hospitals, but above the law when it comes to other actions that he can take unilaterally to do just about anything.

I'm going to yield to Mrs McLeod, who wants to place a supplementary question on this issue.

Mrs McLeod: I want to take some of the words out of it and just get down to what I as a non-lawyer take from this. This is why this kind of debate and understanding is so crucial, because here's one small clause of this immense act that conveys such incredible powers that we have no idea what may be done with them in the future.

Let me just take the words that I read. A statement of intent I don't think is sufficient, because you could tell me whether or not courts typically are able to base judgements on what was intended when the act was written, and I have not read a lot of judgements, but as a legislator one of the things that I've heard courts say is: "We can't go back and look at what you intended to do. What we have to deal with is the letter of your law." So I'm worried about the letter of the law here.

I read it as saying, "Despite any other act"—and I'm going to take the rest of the words out so we don't confuse the issue—"the board shall be deemed to have the unrestricted power to carry out a direction under this section." You must have in mind other acts that could intervene, and I would like to know what those acts are that can by law now, by this law allow the Minister of Health to override any other law.

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Ms McKeogh: The other acts would be, first of all, special acts that govern individual hospitals, of which there are about 25 in the province. Those special acts may contain restrictions on the power and capacity of the board to govern. The other act would be the more general act, would be the Corporations Act, which requires special approval of members for certain actions such as amending the letters patent of the hospital corporation.

Mrs McLeod: That I think clarifies the intent as you drafted the law. But now I'd like to ask you about the letter of the law as written. When it says, "Despite any other act...the board has unrestricted power to carry out a direction" of the minister, even though you didn't intend it to override the Labour Relations Act, for example, or a collective bargaining agreement, why would it not, given the way this is written?

Ms McKeogh: Because the words are "the unrestricted power to carry out a direction," in my view, the wording of the section would have to be much clearer to go beyond the question of the capacity of the board. To go to the issue of overriding collective agreements or other types of contractual agreements, for example, the wording would have to be much clearer to do that.

Mrs McLeod: But in the meantime we have words that are written that say, "Despite any other act." So I would take you to the amendment, and I do this because I think it's a reasoned amendment, and we have dropped the words "despite any other act." We've left in "despite the letters patent, supplementary letters patent or bylaws of a hospital," recognizing that this minister is determined to have some powers to do things and we're not going to win otherwise if we don't acknowledge that, but the powers he would exercise "shall not contravene the provisions of any other act." All our amendment is doing is saying, don't put the minister beyond the other laws of this province. Is that not a reasoned amendment that still preserves your intent?

Ms McKeogh: As I say, the two specific cases we're concerned about are possible restrictions on the board's ability to act. That would be in special acts governing hospital corporations, and the other one being restrictions on the board's ability to act which would be contained in the Corporations Act.

Mrs McLeod: Based on that explanation, may I then ask the parliamentary assistant if she would undertake to bring forward an amendment to their own legislation which would make clear that it is only the special acts that are related to the functioning of the hospital board that can be overridden by this clause.

Mrs Johns: We'll stand this amendment down and we'll talk about it. I'll get some information for you and I'll come back to you. I think Ms Lankin has a question about this.

Ms Lankin: To Ms McKeogh, I understand that you're answering the specific questions with respect to this section that Ms Caplan and Mrs McLeod were putting to you about whether or not such a direction could cause the board to override contracts, agreements, collective agreements or any other sort of thing.

I had raised this much earlier on in questioning, I think during the first week of hearings, I can't remember when it was. But my question had been, when you put this clause together with subsection 44(1) which says:

"If a board of a hospital determines that the hospital will cease to operate as a public hospital or the minister has directed the board of a hospital to cease to operate as a public hospital"—that comes back to the minister's direction—"the board may make any decision in the exercise of its powers under section 36 that the board considers necessary or advisable"—necessary or advis-

able—"in order to implement the board's determination or the minister's direction including, without restricting the generality of the foregoing," refuse applications, refuse appointments etc.

There are a couple of other sections, when you put it all together, that strike me, where the minister makes a direction and the board must carry out that direction despite bylaws, letters of patent, take any action necessary to implement. When you put it all together, it strikes me that your answer earlier that the board wouldn't, in your opinion, under that section override contracts or agreements or whatever, that in fact, when you put the whole package together, they might well have to, they may be the necessary actions, and in this case, in this section, an appointment of a physician, an agreement to appoint a physician, for example. That's a very specific example, but I think there are others when you string them all together.

So I'm wondering if, as you stand it down and you take a look at it, could you please explain to us the cumulative effect of all of these powers of directions of the minister, where the board must then take necessary action, and what in fact that could lead to in terms of overriding contracts, agreements, tenders, who knows what?

The Vice-Chair: Do we have unanimous consent to stand down this motion? Unanimous consent. That will be stood down.

We'll move to the next motion, government motion number 34. It's Ms Johns.

Interjection: Is that 34A?

The Vice-Chair: No, 34A will be dealt with subsequently.

Interjection.

The Vice-Chair: No, government motion, section 6 of the Public Hospitals Act, "Repeal" on the bottom; adds subsection (9).

Mrs Johns: I move that section 6 of the Public Hospitals Act, as set out in section 6 to schedule F of the bill, be amended by adding the following subsection:

"Repeal

"(9) This section is repealed on the fourth anniversary of the day section 6 to schedule F of the Savings and Restructuring Act, 1995 comes into force."

As we all know, as we went through committee we heard a number of people suggesting that there should be a sunset to this. The Ontario Hospital Association came to us and suggested the sunset should be between three and five years. What has happened is that we have decided on a four-year plan and that's what we've set forth as the sunset provision within this act.

Interjection.

Ms Lankin: My apologies. I was just signalling to the Chair that I wanted to be on the list to ask you a question, Ms Johns, with respect to this.

I have no objection to this amendment. I would agree with your characterization that we heard from many presenters, although they may not have been in favour of what was contained in the provisions you're putting forward, that they at the very least wanted to see those powers in section 6 sunsetted, the role of the commission sunsetted, which you have done in both those areas. But

I put to you that all of those presenters also asked for the powers of the supervisor in section 8 to be sunsetted. You have not tabled an amendment to sunset those powers.

I am wondering if you can commit to us now, because there are only a couple of hours left that you can get amendments tabled, that you will as well sunset those extraordinary new powers of the minister to be able to appoint a supervisor without due process, without an inspector's report, all of those things that we've talked about, which was part of the request of everyone who came forward and asked you to sunset the commission and sunset the powers under section 6. They also asked for the powers under section 8 to be sunsetted.

Mrs Johns: The government won't be committing to sunsetting the supervisor's powers.

Ms Lankin: Okay. Perhaps you could tell me why?

Mrs Johns: We believe that we need the supervisors to be in the hospital, to be able to assist in different areas that we need to put supervisors into the hospital for, and we feel that this power is something that we need to have not only for four years, but further on.

Ms Lankin: Ms Johns, could I ask you, the current powers of supervisors in the existing act, how often have those powers been used in the history of the province of Ontario?

Mrs Johns: Rarely.

Ms Lankin: Right. And when I asked the minister on the first day of hearings why in fact he needed these new extraordinary powers when the existing powers to appoint a supervisor had only ever been used a couple of times, he was unable to answer that question. That's about a month ago. Perhaps now you have that answer. Why is it necessary to have these extraordinary powers beyond what was in existence?

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Mrs Johns: We believe that although the act, with respect to supervisors, is slightly broader, it's within the same general degree as it was in the previous act. We believe we need to have hospital supervisors in the future to be able to come in to situations where a hospital for any reason needs additional help in managing the system or quality of care issues, and we need to be able to have the availability of supervisors to go into situations that are necessary.

Ms Lankin: This is disturbing because the existing act actually provides for supervisors to go in when there is concern about quality of care, patient care, and that sort of thing. As you know, there is a process and the hospital has the opportunity to respond and petition etc.

In the new section there is none of the requirement for the investigator's report and the action to have the supervisor being sent in to be done as a result of an investigator's report. There's no opportunity provided as a requirement of due process to respond to the investigator's report. All of those things are the things that are required now when someone is making a challenge about quality of care. That's the balance that's in the system.

I would have thought you wanted the new extraordinary powers not in those circumstances of dealing with quality of care, but because you need to restructure hospitals and you want to do it quickly. That's the usual answer we get from you, and I would have thought that's

the reason you need more extraordinary powers of supervisors. Is that correct?

Mrs Johns: We have put the extraordinary powers in as a result of the restructuring; that's why we put them into the act. I think that at this particular point we should defer to the Ministry of Health and see why they believe the powers should stay and why they weren't sunsetted.

Mr Cooke: It's a political decision.

Ms Lankin: No, this is a very political decision. Come on, Helen. With all due respect, I know you've got people on either side writing you notes. You know why they want you to stop? Because you're getting into a trap. I'm leading you into a trap, and the trap is that if you need these extraordinary powers for the purpose of restructuring, which is what you need the powers under section 6 and the commission for, and you're ready to sunset those other things after four years, then you should be willing to sunset the extraordinary powers of the appointment of supervisor after four years, because it's all a package. It's the tools you said you needed to do the restructuring and to do it within four years.

There is not one reason, I believe, that anyone in the ministry, in the departments, could give that would suggest that the ministry be able to have extraordinary powers beyond anything that's ever existed, that they've only ever used a couple of times in any circumstance, other than a restructuring where you've got a hospital board where they quit or they won't deal with it or they won't implement the directions, and you've got to step in and take over and exercise those powers. So tell me again why you won't sunset them.

Mrs Johns: Why don't we hear what they've got to say, then, if you don't believe there's an explanation?

Ms Lankin: The question is to you. You heard all the presentations about sunsetting of these powers. Why won't you answer why you believe you need those powers beyond four years? That's the question.

Interjection: You've got to defend the bill.

Mrs Johns: My answer is I believe we do need the powers after the four years. I'm deferring to the Ministry of Health.

Mr Peter Finkle: A couple of things about some of the discussions we had with the Ontario Hospital Association. They'd asked for the sunset of the commission and the section 6 minister's direction-making powers, but they had asked for the sunset of not the appointment of the supervisor, but aspects of how that appointment would be made, with respect to the public interest. We haven't got to the public interest sections yet.

Regarding the supervisor, there may be instances that will occur subsequent to this four-year period where the direction-making authority is not there where it may be necessary to appoint a supervisory—in extraordinary circumstances and in the public interest to remedy some situations in hospitals. The restructuring will not—the majority of it will be done, but without any direction powers; this makes the appointment of supervisor important to have as a last-resort remedy.

Ms Lankin: Peter, I'm sorry. You said that people wanted not the appointment of supervisors to be sunsetted, but the process by which it's done, and that's what I'm talking about. I'm not talking about repealing the old

section of the act. You would still have the ability to appoint a supervisor. You send in an investigator; you get a report; the hospital responds if there's a problem.

Please don't tell me that you can envision today that in five years' time, after all the restructuring that we've gone through, there's going to be a circumstance where you can't have a little bit of due process where a hospital gets the chance to refute a report with respect to a supervisor coming in with new powers to take over the day-to-day operation of the hospital, as opposed to a situation where the board has to check with the supervisor on major directions.

All I'm suggesting is that it should go back to the old powers, which were already broad. The new extraordinary powers have always been explained by representatives of the government, staff and political representatives of the government, as being needed to accomplish this major restructuring in four years' time. You are retaining unto yourself, I'm going to say to Ms Johns, powers beyond the four-year period, and for no good reason that we can see, because they are all powers related to restructuring.

Mr Finkle: The government has tabled a motion, I believe, regarding some due process around the appointment of a supervisor in terms of giving adequate notice and ability to make representations. The disconnect from the investigators—one can foresee instances that have come very close to occurring where it's necessary to go to a supervisor as opposed to an investigation in the first instance, and particularly where the board cannot form a quorum to make decisions.

Ms Lankin: Okay. I would respectfully submit to you that the provisions you're talking about in the amendment which you say are related to due process and rights are simply 14 days' notice. That's not a heck of a lot of due process compared to what's in the old act.

I just find your answer interesting, which was that there are circumstances that we have come perilously close to in the system already where you wanted a disconnect, as you called it, between the appointment of an investigator and a report and the appointment of a supervisor. That's interesting, because that seems to me to be the real reason, then, that you are enhancing the powers in the supervisory section and you want to keep those powers forever. It's not something I believe the government actually knows anything about or has taken a political decision on, because Mr Wilson sat here and said: "We're not going to probably ever use these powers. We've only twice maybe used the powers in the existing act in the history of the province."

So what is it that the ministry, Ms Johns, the department in terms of the hospitals branch, wants to be able to do with these extraordinary powers that they've never had to do before—come perilously close to maybe, but always worked out through consensus and negotiation and cooperation with the volunteer boards and the CEOs of these hospitals? What is it that you politically support about that request from the department that you're prepared to defend, not sunsetting these powers, when that was the request that came to you from all of the hospitals and the hospital association representatives that we heard?

Mrs Johns: Can I just ask a question of the Chair first? We're in section 9, and the amendment is relating

to section 6. Should we be having this debate at section 9, or should I continue on with this debate at this particular time?

The Vice-Chair: You mean the question is related to another amendment in a further section? Well, I believe it relates back to this—

Mrs McLeod: I move, Mr Chairman, that we move immediately to that further and consider the two jointly.

Ms Lankin: They're very interconnected.

Mrs McLeod: I don't think that what the parliamentary assistant is trying to do, Mr Chairman, is legitimate. They're trapped with a problem. They don't know how to explain it, so they want to stand it down until some time—

Mr Cooke: That's exactly what was going on.

The Vice-Chair: Thank you, Ms McLeod. Can I—

Mrs Johns: We believe we need the powers in case restructuring isn't finished. We believe that we need to be able to have the ability—

Mr Cooke: You ain't going to be restructuring in the fifth year; I can tell you that.

Interjection: Let her finish.

The Vice-Chair: We have two other people who want to speak to this amendment. Mr Cooke, you wanted to speak to this amendment?

Mr Cooke: I just want to make a comment on this. There were earlier amendments, but this gets to the most cynical part of the bill, that you got caught with people being very concerned about the extraordinary powers you were centralizing to the government both with this and on the municipal side. So you thought politically, in order to deal with that, "We're going to bring in some sunset clauses, because then we can tell everybody that we're not taking these powers forever, we're just taking them for a very short period of time to deal with a crisis and we're going to drop the powers about six months to a year before we drop the writs for the next election."

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That's what this is all about. This has nothing to do with good government policy, good public policy. It has all to do with politics, and it's cynical, it is inappropriate. I think my colleague has said that there are other amendments that should be coming in. If you really believe in sunset powers, there are other powers that you should be moving amendments on to sunset them. There's only a very short period of time left before amendments can be brought in. We need the help of the public in order to make sure that those amendments come in—

Interjections.

Mr Cooke: —and I encourage the people of the province to phone this number. This is Mike Harris's—

The Vice-Chair: Mr Cooke, you realize that public demonstrations by banners are not permitted in committee or in the Legislature.

Mr Cooke: Look, I've learned how to do this from one of your colleagues.

The Vice-Chair: I'd appreciate it if you didn't.

Mr Cooke: There's nothing out of order.

Ms Lankin: Call Mike instead of—

Mr Cooke: Do I still have the floor?

The Vice-Chair: You still have the floor, but please don't conduct a public demonstration via banners.

Mr Cooke: Then let me indicate to anybody who is watching these proceedings that we're not allowed to show you the phone number, but the phone number is 416-325-1941. That's Mike Harris's office's number. There are staff on the switchboards right now. Call in. Demand that the Premier—

The Vice-Chair: Moving debate along on the motion, Mrs McLeod.

Mr Cooke: —extend the public hearings, extend the discussion on this bill.

The Vice-Chair: Mr Cooke, I'm giving Mrs McLeod the floor to speak to this amendment.

Mr Cooke: Mr Chair, there is nothing that I am saying that is out of order. Can you tell me what is out of order? I'm talking about the need to further amend the bill. I've given out a phone number because obviously the members of the committee here—there's nothing that is out of order. Tell me what is out of order.

The Vice-Chair: Are you ceasing to speak to the amendment?

Mr Cooke: I'm talking about the amendment and I'm talking about the need for the public to get involved because the government is not prepared to bring in further amendments to sunset further powers, and the cynical nature of this particular amendment that the government has brought forward.

I'm suggesting to people that the government is trying to pull the wool over their faces, and that in fact the only way that we can change this is if people get on the phone to 416-325-1941 and call the Premier's office and say enough is enough, that this farce has got to stop, that the government cannot continue to take these powers to themselves and centralize powers, close massive numbers of hospitals across the province with this centralized power, and exclude local communities from being part of the process.

The only way it can be stopped is with the public phoning in to the Premier's office at 416-325-1941, and we'll continue to give out this phone number because I know that people want to be involved. They've been shut out of the public discussion process, but they can remain involved, and they can do that by calling 416-325-1941, the Premier's office.

The Vice-Chair: Mr Cooke, this is becoming repetitive.

Mrs McLeod: Although I appreciate the efforts being made by Mr Cooke to provide a phone number, I think he'll probably get a recorded message saying the Premier is not responsible and has no knowledge of what's in the act; please talk to the ministers.

Mrs Ecker: That's not what he said, Mrs McLeod.

Mrs McLeod: If they call the ministers, they will find that the ministers are not prepared to speak to the act and defend the act; speak to the parliamentary assistants. And if they follow the proceedings of this committee, they'll find that the recourse of the parliamentary assistants, whenever they're asked a question that neither the politician nor the ministry can answer, is they stand it down, and as we know, with the clock ticking, we will never see what is stood down come back to the committee for debate again.

Even with that frustration, I would like to draw attention to the exchange that just took place, because I think it is significant. We are talking about an amendment proposed by the government to their own legislation which sunsets the powers given to them, as our colleagues have just pointed out.

It was a relevant question for Ms Lankin to ask: What about sunseting the other considerable powers given to the Minister of Health, and in particular the powers of the supervisor? The answer that Ms Johns gave was to say, "Well, I want to find out why the Ministry of Health wants these powers." And you used the term "the Ministry of Health" wants these powers. The response of the Ministry of Health, the bureaucrats of the Ministry of Health, with all due respect, the non-elected members who constitute the Ministry of Health, was to say, "We need these supervisory powers to continue to be able to step in and micromanage hospitals even after the economic war measures act is no longer needed by the politicians." You're prepared to sunset your powers to step in and restructure hospitals as politicians, where you get your cuts. That's what this is supposedly all about: restructuring for the purposes of financial savings—cuts by any other name. But once you no longer need those powers, your ministry, the bureaucrats, still want the power to be able to step in and manage hospitals on a day-to-day basis.

I want to tell you that what worries the public is exactly that, that giving these kinds of incredible powers to a minister ends up giving powers to bureaucrats who are not even elected and accountable to the electorate, who can at least, at the end of four years, say to the politician, "We don't want you having those powers any longer." They don't get to say that to the bureaucrats.

What you just said, Ms Johns, is very frightening for anybody who's trying to follow these proceedings, when we say, "Why do you need this?" and you say, "Let me find out why the Ministry of Health wants this."

Ms Johns, I have the floor and I will finish, because I'm not looking for an answer; I am simply tracking the exchange that took place.

I want to point out the fact that the supervisory powers that are needed by a Ministry of Health or a minister, where there is concern about the management of the hospital, are in the act. Ms Johns, I hope you are aware of what is currently in the act, because the only change that's here—

Mrs Johns: Only the cabinet can appoint the supervisor.

Mrs McLeod: You can appoint a supervisor. Any previous Minister of Health has been able to appoint a supervisor where there are concerns about management, but due process was indeed required. An inspector had to go in and the inspector had to make a report. You don't need economic war measures acts to go in and micro-manage hospitals.

We are debating an amendment. We'll support the sunseting of the powers on restructuring, but even as we do that, I share the concerns that other powers are not being sunsetted. I also want to make it absolutely clear that even on the issue of hospital restructuring, we don't

think those powers should be given to the Minister of Health or to the ministry in the first place. We know that the damage can be done by this government in the next four years, and that's what really worries us when it comes to the restructuring of hospitals. But I can assure you we're going to add our concerns to those of our colleagues when it comes to not even sunsetting the supervisory powers after that four-year period.

Mr Clement: I speak in favour of the government motion. Forgive me, I will not accuse the opposition of hypocrisy, because that's a very strong word, but let me at least put on the record the inconsistency of the opposition's comments with respect to this particular motion. I'm glad Mrs McLeod has said in the end that she supports this, because—

Ms Lankin: I did as well.

Mr Clement: Thank you, Ms Lankin. But the way in which you supported it leads those who are viewing this to conclude that somehow this was something that was not demanded or something we didn't hear from the hearings.

Ms Lankin: Not at all. That's not what I said.

Mrs McLeod: No, that is not in fact the case. It is a point of order and a correction of the record. Mr Clement cannot rephrase what we have put in—

The Vice-Chair: Mr Clement has the floor.

Mr Clement: Okay, that's fine. I'll yield the point.

Mrs Caplan: It's inadequate.

Mr Clement: Inadequate. Thank you. The point is, from my perspective, when I recall Minister Wilson coming before the health side of the committee, he made it clear that at the very least there were going to be sunset provisions with respect to the commission. I heard from the opposition and I heard from the presenters that that wasn't good enough, that the powers had to be sunsetted as well.

Mrs McLeod: No, that they shouldn't exist. That's the point that was made.

Mr Clement: No, I think you are on record saying, "If you're going to sunset something, sunset the powers rather than just the commission." That's what I recall. I confess I do not have it exactly as to what page it is in the Hansard, but that was what I recall the opposition saying: "Don't just sunset the commission; sunset the powers."

Mrs McLeod: Mr Clement, I would like the record set straight. My quoting of it is very clear.

The Vice-Chair: Mr Clement has the floor right now.

Mr Clement: That's my recollection, Mrs McLeod.

Mrs McLeod: Mr Chair, I'm—

The Vice-Chair: I can give you the floor again.

Mrs McLeod: Yes, Mr Chair, I understand Mr Clement has the floor, but Mr Clement is using his time to state inaccurately the position that I have taken and my colleagues have taken. That is not an acceptable contribution.

Mr Clement: That's not my recollection. I guess you and I are going to have to disagree, Mrs McLeod, because my recollection is quite clear that your point—and you tried to hang us out to dry on this—

Mrs McLeod: But you have a unique recollection of what my point is.

Mr Clement: Sometimes reasonable people disagree, Mrs McLeod.

Mrs McLeod: No, this isn't a disagreement between your view and my view; it's just a bad communication of my view.

Mr Clement: That's why we have political parties and democracy, because we don't agree all the time.

Interjections.

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The Vice-Chair: Order, please. Mr Clement has the floor.

Mr Cooke: Perhaps he should state his opinion and stop—

Mrs McLeod: Yes, don't state my views.

The Vice-Chair: Mr Clement has the floor.

Mr Clement: I'm getting a bit of flak here from the opposition and I apologize if I'm—I don't mean to be provocative, but my recollection, and I think—

Mrs McLeod: State your own views, not mine. I'll state mine for myself.

Mr Clement: I am trying to bring some perspective to this current discussion. Let me say it this way, then. I am pleased that we have listened to the presenters, which the opposition accuse us of doing in fact quite the opposite. We are adding to our bill a clause which sunsets not only the commission itself but the powers that reside with the minister under section 6. There has been no point of order raised, so I suppose that was a kosher thing to say.

With respect to the point raised about how extraordinary these powers are, I will state for the record, as I did during the hearings, that in fact when one looks across the scope of the Dominion of Canada, these powers are not so extraordinary, not so unique. In fact, in the province of New Brunswick, which I believe has a Liberal Premier, the province dissolved every single hospital board and took in those powers to the ministry and to the executive council the running of those hospitals.

We are not suggesting that at all; in fact, quite the opposite. We see the need and the benefits of a voluntary board, but there has to be, at the end of the day, some accountability for the taxpayers' dollars, which has to be balanced with the powers of the volunteer boards. When we're in the process of restructuring, we think we can do it and the minister thinks he can do it in four years.

Mrs Caplan: You're making it harder and harder for us to support your amendment.

The Vice-Chair: Order, please.

Mr Clement: I'm sorry, I just wanted to restate what I thought was the obvious, that we heard from the presenters that there had to be restructuring in the hospital sector. This allows us to do that but at the same time recognizes that these are extraordinary powers in the sense that they should only be used sparingly and as a last resort and that after a four-year period they should be removed from the arsenal of powers that the minister has. So I support the amendment.

Mr Patten: I just wanted to underline the backdrop. Mr Clement says that we are kind of going back on our word of saying that these powers should not in fact remain, when before we said that we had some concerns about it. What I would like to say is that if you look at the overall powers of the minister, that's what we're taking issue with.

So what is happening here is we're going to support it because we're saying yes, given that you're not going to move on removing the powers of the minister overall, this is a small concession to make in acknowledging that this will have a sunset clause. But it's akin to saying, "I'll take your rights away for four years, and then I'll give them back to you." It's an insult. It's not a question of responsibilities; it's a question of democratic accountability. That's the point everybody keeps making: It's the overall powers that have been lost by the Legislature, have been lost by the systems, have been lost by access by everybody in society that is the major concern. But seeing that there's no movement on that, when small concessions like this come through, we'll say yes, we'll support it because it's better than nothing.

But the overall concern about the powers of the minister are there and I would ask the parliamentary assistant if her legal counsel has done a legal search throughout this country to see where those kinds of powers have existed. There was one reference—interestingly enough, I'm going to be speaking to the Minister of Health from New Brunswick this afternoon. I'm going to ask him the kinds of powers that were employed there and what happened.

Mrs Johns: Was that a question?

Mr Patten: Yes.

Mrs Johns: Yes, they have done a search. We have the information here. I'd be happy to let the information come out.

The Vice-Chair: Thank you. Ms Lankin.

Mrs Johns: Can I not put it on the record? He asked me a question.

The Vice-Chair: You may table that, yes, with the clerk.

Mrs Ecker: I'd like to hear it.

The Vice-Chair: Ms Johns, would you like to—

Mrs Johns: Go ahead, Ms McKeogh.

Ms McKeogh: We reviewed the hospital legislation in the other provinces, as set out in the Canadian Health Facilities Law Guide, and the provisions that were noted were as follows—do you want me to go through each province briefly?

In Alberta, under the Hospitals Act, the minister has a broad power to issue directions. He may, by order, determine certain powers—

Mrs McLeod: Point of order, Mr Chair.

The Vice-Chair: One moment, please. Point of order from Ms McLeod.

Mrs McLeod: If we're about to get into a debate about whether the powers granted to the Minister of Health in Ontario are unprecedented under this act, I would really want to take us back, in a very thorough way, to discussions such as the one we just had about whether or not there are clauses in anybody else's legislation that would say that despite any other act a Minister of Health may direct boards to take any direction that he gives them. It's that kind of detailed power, contained in small subclauses, that we're concerned with.

The Vice-Chair: It's really not a point of order of the proceedings. We've had a question and I believe they're just reading the answer for the question that was asked. I don't think there's anything out of order with regard to that.

Mrs McLeod: I just want to serve notice that a partial answer to a question is going to create a great deal of debate.

The Vice-Chair: This was a specific question and I believe she's reading the answer.

Mrs Ecker: We haven't had an answer yet. How do you know it's partial?

Mrs McLeod: Because if it were to be complete, we would have to deal with all the balance of the schedules of the act respecting health care, which we are not going to get to, because we're not going to get through this amendment.

Mrs Ecker: Mr Chair, we have information that committee members would like to hear.

The Vice-Chair: I believe it was a specific question and this is the specific answer, so I'm going to allow that to continue, because I don't see anything out of order. Continue, please.

Ms McKeogh: As I say, this is a review of hospital legislation in other provinces.

In Alberta the minister, by order, may direct, regulate and control any other matters which may be required by this act or the regulations.

In British Columbia, section 44 of the act provides for the appointment of a public administrator by cabinet where it's considered in the public interest to do so. The public administrator may be given the exclusive right to exercise all the powers of the corporation, the board and the members of the corporation. Unless the appointment provides otherwise, the board ceases to hold office on the appointment of a public administrator.

In Manitoba, public hospitals are licensed by the Minister of Health. Closure may be effected by licence revocation. Section 20 provides that the minister may, at any time and in the minister's absolute discretion, suspend a licence for a period of up to three months. Section 22 provides that cabinet may direct that a licence be revoked or not renewed or extend a suspension.

In Saskatchewan, subsection 33(1) of the Hospitals Standards Act provides for the appointment of a public administrator by cabinet where the minister is of the opinion that—there are four grounds listed: continuing provision of care to patients is threatened; members of the board have resigned and are not being immediately replaced; the safety of patients is being jeopardized; the board has failed to assume responsibility for the provision of services; or under the particular circumstances of the case it is in the public interest that a public administrator be appointed to manage the affairs of the board of governors. The public administrator has the exclusive power to exercise all the powers of the board and the board ceases to hold office on the appointment of the administrator.

In Quebec, Bill 83, An Act to amend the Health and Social Services Act, was introduced on May 4, 1995, and assented to on June 21, 1995. It provides that the minister may restrict the provision of specified services to the specified institutions.

It provides that the minister may, after consultation with the regional board and after giving the permit holder the opportunity to present his views, modify the permit of a public institution to modify the mission, class, type or

capacity indicated in the permit if the minister is of the opinion that the public interest warrants it.

It provides that the minister may withdraw the permit of a public institution, either at the request of a regional board or of his own initiative, if he is of the opinion that the public interest warrants it, in particular to ensure effective and efficient management of the health and social services network.

There is a process set out in the legislation involving publication of a 45-day notice of intention in the Quebec Gazette. After publication of the notice, the minister must give the institution and the board an opportunity to present their views.

The hospital must submit a plan for closing to the minister for his approval within 30 days after receipt of the minister's decision to withdraw the permit. Contents of the plan are specified.

"If the hospital neglects or refuses to submit the plan, or does not carry out the...plan, the minister shall appoint a public administrator to exercise all the powers of the board."

1230

In New Brunswick: "Effective April 1, 1992, the control and management of all public hospitals...was transferred to the Minister of Health...."

"Effective July 1, 1992, the Public Hospitals Act was repealed and a new Hospitals Act enacted which vested control and management of all public hospitals in New Brunswick in eight regional hospital corporations.

"The first boards of trustees of the eight hospital corporations consisted of persons appointed by the minister for a term of two years."

It goes on to discuss the composition of the boards.

Newfoundland: "Section 4"—of the Hospitals Act—"provides that cabinet may constitute a hospital board to manage and control the operation of a scheduled hospital.

"All assets, liabilities...of an existing hospital authority are vested in the appointed hospital board.... Cabinet may constitute regional hospital boards to supervise and coordinate the work of a number of hospital authorities...."

In Nova Scotia: "Under the Nova Scotia Hospitals Act regulations, control and management of a number of hospitals was vested in special interim boards appointed under the regulation, effective September 22, 1994...."

PEI: "No applicable provisions."

The Vice-Chair: Thank you. Can we table that with the clerk and perhaps have a copy for each caucus.

Ms Lankin: I have two points. I wanted to respond to Mr Clement, but just a couple of questions to Ms McKeogh. When you were doing that review—and that's very, very helpful; thank you—were there no provisions in any other province for inspectors to go into hospitals and filing of reports?

Ms McKeogh: Investigators? I don't recall that there were. The model that we have in Ontario, you mean the investigator-supervisor model; the administrator models, as I recall, were in BC. For sure I know it was BC, because I have that section here. It does not have that precondition requirement.

Ms Lankin: It's interesting that here in Ontario for a lot of years we've actually had a practice of due process that our hospitals are used to working with if there has

been any concern. Let's for a moment put aside hospital restructuring, because in fact that's not been the contemplated use of those sections in the past; it has been for patient care and quality of hospital administration. So there has been a process where there has been an investigation if the minister felt that was warranted. The investigation produces a report, and the hospital has an opportunity to have some input into that, review it and comment on it or whatever. Then, if in fact the situation is not resolved—which in almost every case we can ever think of it's been resolved at that level—then a supervisor could be put in.

Ms McKeogh: Those are the existing provisions.

Ms Lankin: Just so Mr Clement knows, the concern that I'm raising is that I think that's a pretty good system and that it should continue to exist except for the circumstances that you have all been pushing for that you need with respect to restructuring. The point that I made, Mr Clement, just so I can put, again, my own comments on the record, I certainly did not object to the amendment before, sunseting the powers in section 6 of the Public Hospitals Act, the powers of the minister to direct a closure or merger. You will recall at the time that I did not object to the amendment you put forward which sunsetted the role and mandate of the commission.

The point that I'm making is that the package that people have asked you for, from the hospital association etc, with respect of sunseting was: the commission, the role and mandate and the existence of the commission; the powers under section 6 of the Public Hospitals Act for the minister to be able to direct closure and amalgamation; and the powers under section 8 of the Public Hospitals Act that allow for the appointment of a supervisor without the investigative report process.

Now, they're saying, "For the period of the four years, if you think that you're going to have to have the ability to appoint a supervisor to come in and take over the operation of the hospital in order to effect your restructuring, fine, but, for the same arguments as in section 6 and under the Ministry of Health Act with respect to the commission, all of those should be sunsetted."

You went to great lengths to say you were pleased to be able to tell people that you had been listening to their requests for the sunseting of powers and had agreed and were responding to that. What I'm pointing out to you, and all I've been trying to point out to you, is that you missed one piece of it. I asked the parliamentary assistant if she could explain why that one piece was not there, and what we got into was an explanation that it's not a political decision, it's not about the restructuring, it's something that's been thought about inside the ministry.

There are no rational grounds, based on experience, because we've barely ever used the powers that exist now with the due process, the checks and balances in it, so it's not reasonable to look at expanding those powers. There's no demonstrated need, is the point I'm making, other than in the extraordinary circumstances of restructuring, which you have acknowledged in two other sections are circumstances for which the powers you provide, the tools you provide, are going to be sunsetted after four years.

That's the only point I'm making. I think it's a reasonable one, and I would ask you, over the course of the next few amendments, before we get to section 8, that you contemplate an amendment, similarly worded, which would sunset those powers at the same time and would revert to the existing powers of the minister to appoint a supervisor with due process that exists under the Public Hospitals Act.

Mrs McLeod: Mr Chairman, I will refrain from attempting to do a detailed analysis and relating the information that's been tabled to the clauses we've already debated, although it's tempting to do so because it's highly enlightening and informative. If that information can be made available to us, I do think it can be a good reference point for consideration of any other clauses, where there is information about other provinces in relationship to what continues to be unprecedented powers being given to the Minister of Health in Ontario.

However, as it is the government members who wanted it publicly read into the record rather than tabled for our future reference, I want to note a very important underlying theme; that is, that the minister of health in other provinces must at least be guided by the direction and consultation of his cabinet colleagues. That underscores the point we've been making about the very unusual and unprecedented nature of what is happening in Ontario, where in many cases the Minister of Health does not have to have reference to his cabinet.

I'd also point out to Mr Clement, who has regularly informed us about the government of New Brunswick, indeed a Liberal government, that moved in a very sweeping way to restructure its hospitals, that, as has just been pointed out, they also moved immediately to restore full governance powers to the new regional boards. They did not see the need to continue to have powers to micro-manage after they had restructured. That is what this debate is about on this amendment.

The Vice-Chair: Seeing no further debate, I will put the motion. Shall the motion carry? I declare the motion carried.

We move to the next motion from Ms Johns, 34A in the guide.

Mrs Johns: I move that section 6 of the Public Hospitals Act, as set out in section 6 of schedule F to the bill, be amended by adding the following subsection:

"Matters to consider

"(10) The minister, in issuing directions under subsection (1), (2), (3) or (5), shall have regard to district health council reports for the communities to which the directions relate."

As everyone will be aware, this was one of the debates that happened yesterday between the Liberals and the NDP. We made an undertaking to look at how we could ensure that we look at, have regard to, local planning, so we have brought forward this motion as a result of the debate yesterday and the hearings we heard throughout the last two or three weeks.

Mrs Caplan: The question I have is a very simple one. The existing law permits the appointment of a supervisor 30 days after an investigator's report. The 30 days is practice in Ontario today, so why did you opt for 14 days rather than 30 days?

Ms Lankin: You're on the wrong amendment, Elinor.

Mrs Caplan: Am I on the wrong one? I apologize.

The Vice-Chair: It's okay. There's a lot of paper to deal with. We're on 34A, subsection 6(10).

Mrs Caplan: I don't think I have that motion.

Mrs McLeod: I don't either. It's not in the package we see have.

Ms Lankin: It's been circulated.

1240

Mrs Caplan: Oh, I understand. This is the one that was stood down that gives regard to the district health council reports? We'll support that. It's minimal, but we'll support it.

Ms Lankin: While it is minimal, I would point out that it took about 20 minutes to half an hour of debate on Ms Caplan's amendment, which was defeated, to insert the words "upon the recommendation of a district health council," and an hour and a half debate on an amendment I put forward, which has been stood down, which I think will now be brought back and defeated, which was "upon the recommendation of the commission." That's probably a couple of hours-plus of committee time to get to the point where there was an agreement to have these words "having regard to district health council reports."

While it is minimal in terms of its scope, I am delighted to see this amendment being tabled. While two hours of committee time is extraordinary, that it should have taken that to make the point and to have gotten at least a partial response to the point, I'm delighted that happened, so I will be supporting it.

The point to be underscored here, however, is that there are 111 or so other government amendments, plus probably 170 or 180 opposition amendments yet to go through, and there may be other occasions—I'm hopeful, actually, with respect to the points that I've just been making about sunseting supervisors—where if we get into an opportunity of actual dialogue and start to understand each other, we could actually make some amendments to improve this legislation. But I suggest to you that it can't be done if at 1 o'clock tomorrow all the amendments are going to be deemed moved and you move through them and just vote on them with no debate.

This underscores the request that is being made for the government House leader to contemplate the possibility of one more week of clause-by-clause so that we, as legislators, have this debate and improve the legislation in the way it appears we are beginning to succeed in doing at this time.

Mrs Johns, I appreciate the amendment you have tabled and I will be supporting it.

The Vice-Chair: Further debate? Seeing no further debate, shall the motion carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, McLeod, Phillips, Sampson, Tascona, Young.

The Vice-Chair: I declare the motion carried.

The next motion comes from Ms Lankin.

Ms Lankin: I move that section 6 to schedule F of the bill be amended by adding the following section to the Public Hospitals Act:

"Procedures for ceasing to operate etc

"6.1 The closure of a hospital pursuant to a direction under subsection 6(1) or the amalgamation of two or more hospitals pursuant to a direction under subsection 6(3) shall be carried out in accordance with the procedures set out in the regulations."

Just a word of explanation. There is not anything adequate in the bill. You know we have been arguing all along that we would like to see those things set out in the legislation. It doesn't even set out that there will be procedures the minister and/or his commission under him must follow with respect to the procedures of closing or amalgamating an institution. I have also indicated to members of this committee that I tabled a motion on Monday, which we've not called for debate yet, which asks for the regulations pursuant to this legislation to be published and sent to a committee so we can have some sunlight about the regulations on these procedures.

I move this motion in hope that there is an agreement that the procedures should at least be set out someplace, so that if a hospital is going to be subject to a closure it will know what procedures the ministry will be following, and that there would be, I would hope, some public debate of what those regulations would be.

But even failing my motion passing this committee, I think it would be appropriate that there is a public statement someplace, through the publishing of regulations under this act, that would set out the procedure. It falls far short of what is required and what should be the case, which is that the procedures be set out in legislation, but I know I don't have a chance of winning that point here, so I am trying again to be constructive in making this bill better.

Mrs Johns: The government believes we have set some due process forward by saying we give 30 days notice, within the section, about the closures or amalgamations of the hospital. We also believe, since we have said we will take regard for the local planning process, that hospitals will know far in advance of that, even, that this will be coming. So we believe there is due notice, there is time for hospitals to think about how they could best drive these initiatives locally, and we don't believe there needs to be any more regulations to outline what's suggested in this motion.

Mrs Caplan: I had no intention of speaking to this motion because I expected that you would accept it. It is so minimal that it really does fall short of any of the due process requirements that I had hoped you would agree to put in the legislation. This one was so slightly better than nothing at all that I really felt you'd accept it.

I have to support the motion. I can't imagine why you are not. It expands the regulatory power for the purpose of setting in regulation the process you've been telling us you're going to have in place, which we do not see in the legislation, and there's no place for you to let anyone know what that process will be. The fact that you say it, Mrs Johns, doesn't make it so. Unless it's clear in the legislation, or you make a commitment to make it clear in regulation, you're going to be a laughingstock.

Ms Lankin: Let's just vote on it. Let's not debate it.

Mrs McLeod: I won't debate. I just want to make it clear what your amendment did, Ms Lankin, as opposed

to what the government has in the bill: that the minister, in closing hospitals, would have to follow his own government's regulations. That's what Ms Lankin says he should do. Your bill says the minister acts solely according to his own view of the public interest. I just want it absolutely clear that this is yet another of those areas where this Minister of Health will not have to abide even by his own cabinet's regulations. He doesn't have to go to cabinet for regulation at all. This truly is unprecedented.

The Vice-Chair: Further debate? Seeing no further debate, shall the motion carry?

Ayes

Caplan, Lankin, McLeod.

Nays

Clement, Ecker, Hardeman, Johns, Sampson, Tascona.

The Vice-Chair: I declare the motion lost.

1250

The next amendment would take us into another section. We have two deferred motions in section 6 that perhaps we should go back to and deal with first, the first one being page 31, a motion from Ms Lankin.

Ms Lankin: That's actually not the first one that was stood down, Mr Chair. The first one was with respect to setting out a definition in the Public Hospitals Act with respect to the restructuring commission.

The Vice-Chair: Was that not in section 3? I'd like to deal with the one in section 6, since we're in that section.

Ms Lankin: Okay, if you would like to deal with the one in section 6. That follows section 3, but if you'd like to deal with section 6 first, that's okay by me.

The Vice-Chair: Does the committee want to go back to the first deferred one?

Ms Lankin: That's okay. I have nothing further to add on this point. I think people know and heard that this is the amendment by which I was trying to get the minister to at least take a recommendation from the commission. That has been rejected in all the other amendments set out in this section that related to it, so I expect the government will defeat this as well. There you have it.

The Vice-Chair: Further debate? Just to be clear, everyone, we're on page 31, which is schedule F to the bill, subsections 6(1), (2) and (3). Is everyone on the appropriate amendment? Ms Caplan, you're all right with this?

Mrs Caplan: That's fine. We'll be supporting that.

The Vice-Chair: The government members have that and are ready to proceed? Seeing no further debate, shall the motion carry?

Ayes

Caplan, Lankin.

Nays

Clement, Ecker, Hardeman, Johns, Sampson, Tascona.

The Chair: I declare the motion lost.

Now we need to go to 33C. It was stood down at 11:55. This is Mrs Caplan's motion. Are you ready to deal with this?

Mrs Johns: We have a recommendation I would like Mrs Caplan to look at with respect to this, but I don't know if this is the time I suggest it.

Mrs Caplan: Are you tabling a motion in place of this?

Mrs Johns: I was hoping that you might table this, if you liked it. I don't know.

Mrs Caplan: Let me have a look at it. Do you want to continue to stand it down?

Mrs Johns: No.

Mrs Caplan: Well, as a courtesy. To hand it to me at this moment—I haven't even had a chance to look at it.

Interjections.

The Vice-Chair: Excuse me, committee. We'll keep this stood down and we will go to another deferred motion, that of Ms Lankin, page 30 in the top right corner.

Ms Lankin: I had moved this amendment to section 1 of the Public Hospitals Act. It was amending the definition section by adding a definition, essentially "commission," and adding that that means the Health Services Restructuring Commission established under section 8 of the Ministry of Health Act. It was stood down because it was unclear to Mrs Johns at the time whether she might feel like supporting any of my other amendments which referred to "commission," and so far she hasn't.

Mrs Johns: According to my correspondence with the legal branch, there's no reason for us to need the definition of "commission" in section 1. I stood it down previously to wait to see what amendments we brought in to the section. It was not because I was not supporting anything. As you well know, we have listened to you and have supported one of your motions and put another one forward that you suggested. It's not that we haven't listened to anything you've said, Mrs—Ms Lankin.

Ms Lankin: Ms Lankin will do, and the emphasis is entirely unnecessary.

I don't know what your point is, Helen. You're incredibly defensive about the fact that we've had to go for hours to force you to deal with two minor, tiny, little amendments. Let me tell you, there's lots more coming. On this one, I suspect it means the government is going to defeat it as well, and I guess that's a signal to me that any other amendment I table to this act that has the word "commission" in it will be defeated as well, but isn't that life around this table?

The Vice-Chair: Any further debate on Ms Lankin's motion? Shall the motion carry?

Ayes

Caplan, Lankin, McLeod, Phillips.

Nays

Clement, Ecker, Hardeman, Johns, Sampson, Tascona, Young.

The Vice-Chair: I declare the motion lost.

I've got an announcement to make before we recess for lunch. When we come back, we will move to Mrs Caplan's deferred—

Mrs Caplan: Mr Chairman, we've got this we have to deal with.

The Vice-Chair: Can we deal with that the first thing after lunch?

Mrs Caplan: Sure, but we're prepared to deal with it now. There won't be any debate.

The Vice-Chair: We're just moving along here. I want to read this announcement into the record, then we'll recess, and we'll deal with that one right away after the break.

Just before the morning recess, Ms Johns filed new amendments with the clerk. In total, there were five. Ms Johns said six. I believe she just indicated that she simply misspoke herself. The amendments have been distributed. They replace pages 34A, which we've dealt with, 111, 112, 115, 117, 118, 119, 147 and 175 of the binders. If any members require assistance in ordering their binders, please consult the clerk of the committee at the lunch break. We'll now recess until 2 o'clock this afternoon.

Mrs McLeod: Just one question before we break. I was hoping your announcement was a follow-up to the question I had asked yesterday of the Chair, which was to determine whether the Premier, in his statement yesterday, was directing the ministers responsible for the legislation to appear before the committee.

The Vice-Chair: I'll pass that on to the Chair.

Mrs McLeod: I would appreciate a response to that, because that was my understanding of what the Premier said publicly.

The Vice-Chair: Thank you. Recess until 2 o'clock. *The committee recessed from 1257 to 1404.*

The Chair: Good afternoon and welcome back to our clause-by-clause analysis. Ms Lankin?

Ms Lankin: I just wanted to welcome you back too.

The Chair: Thank you very much. I do want to compliment Mr Maves for filling in very ably in my absence.

Mr Bart Maves (Niagara Falls): Mr Maves would like to welcome you back too.

The Chair: So nice to be wanted.

Before the break, I understand that we were dealing with 33C, a Liberal motion which Mrs Caplan had indicated that she would be filing a change to after lunch. Since she is not here, I'd suggest we stand that down until she does return. Do I have consent to do that? Okay.

I understand also that we went back to section 3 and dealt with the one amendment in section 3 that had been stood down. As I understand it, section 3 has now been completed except for voting on section 3. So I'll ask the question. Shall section 3 carry, as amended? All in favour? All opposed? Section 3 carries.

We cannot deal with finishing section 6 in Mrs Caplan's absence. We will go on to section 7. Based on my records, there are no amendments to section 7. If there are no amendments to section 7, shall section 7 carry?

Ms Lankin: Just give me a moment to flip to section 7 in the bill.

The Chair: Okay, Mrs Caplan—or Ms Lankin.

Ms Lankin: And I welcomed you back.

The Chair: I've been away too long.

Shall section 7 carry? All those in favour? Opposed? Section 7 carries.

Section 8: The first amendment we will deal with in section 8 is from the government.

Mrs Johns: I move that subsection 9(1) of the Public Hospitals Act, as set out in section 8 of schedule F to the bill, be struck out and the following substituted:

"Hospital supervisor

"9(1) On the recommendation of the minister, the Lieutenant Governor in Council may appoint a person as a hospital supervisor where the Lieutenant Governor in Council considers it in the public interest to do so.

"Notice of appointment

"(1.1) The minister shall give the board of a hospital at least 14 days notice before recommending to the Lieutenant Governor in Council that a hospital supervisor be appointed.

"Immediate appointment

"(1.2) Subsection (1.1) does not apply if there are not enough members on the board of a hospital to form a quorum."

The Chair: Any discussion on the motion?

Mrs Johns: It's the government's opinion that we will only be appointing a supervisor as a last resort. What we would really like to do is use the voluntary members of a board to be able to implement restructuring or to be able to move forward in different areas. So it's our primary interest in using the board to be able to move forward and to recommend local initiatives and to utilize the board as much as possible.

In the case where we come into a stalemate, we may have to implement supervisors to be able to make the system move efficiently and effectively. The legal counsel for the Ministry of Health read into the record a number of places across Ontario where they have used different solutions to be able to implement restructuring and to be able to ensure quality control issues.

We talked about New Brunswick, where the government came in and took over all of the hospitals. We talked about Quebec, where the minister may appoint a person to exercise the powers of the board where an institution is not following a mandated purpose. We talked about Saskatchewan, which appoints public administrators in the public interest by cabinet and the administration has exclusive powers to exercise all of the powers of the board and the board ceases to hold office.

So that's what we're doing in this particular section. We want to make the minister accountable for the appointment of the supervisor. We wanted to make sure that the hospital was given 14 days' notice on top of the notice it would have as a result of the local district health council's planning process, and we wanted to be able to appoint a supervisor immediately if there was no voluntary board. We feel that if there's no voluntary board we'll have a quality issue, and the safety of the people of Ontario is important.

The Chair: Any further discussion on the amendment? Mrs Caplan—Ms Lankin?

Ms Lankin: It is me you're calling for? Okay.

Mr Phillips: He hoped you didn't hear that.

Ms Lankin: I was just checking.

I will be voting against this. Let me be clear that what we have in front of us is actually an amendment to Bill 26, which of course contains a series of amendments to the existing Public Hospitals Act. This amendment is

primarily put forward to provide 14 days' notice, except in the situation where there's no quorum.

I don't have any problem with the concept of 14 days' notice. That's better than no days' notice. What I have a problem with is the fundamental change that is taking place, from a process where there is currently an investigator that is appointed, an investigative report, an opportunity for the hospital to have input into that, an opportunity for the minister to receive that to determine whether or not the situation has been resolved, and then, failing that, the appointment of a supervisor, with some different powers that the supervisor has with respect to the day-to-day operating of the board, a little more narrow under the old legislation than under this legislation.

1410

What this does is change that whole system, for every reason. Again, Ms Johns proved my point. The reasons she put forward were the need to be able to deal with restructuring and wanting hospital boards to be able to do that on their own and to deal with the local planning reports, and only in the case where the local board didn't do it would you use the supervisor. But you see, that's not the only time when you appoint a supervisor or you contemplate it or you appoint an investigator. When you have circumstances where you're concerned about the proper management of the hospital or where you're concerned about the quality of the management or the quality of the care and the treatment, those issues are the everyday, ongoing issues that we need to have legislation to be concerned about and a process to deal with, and due process for the hospital to respond.

What we have now between subsections (7) and (8) of Bill 26 is complete discretion again in the hands of the minister and of cabinet. They may appoint an investigator, if they choose, but there's no longer a requirement to do that or for an investigator's report to be filed, nothing that says the investigator has to file a report. There's nothing that gives the hospital an opportunity to see the report, to comment on it or to influence the outcome or the recommendations of the report. There's no opportunity of due process for the hospital to respond to the report and have that taken into consideration. Those things were set out in the legislation prior to Bill 26, so here, at the whim of the minister and cabinet, they may appoint an investigator or they may not. Then, despite what the investigator does or says, they may appoint a supervisor, and a supervisor has some broader powers than were available to the supervisor under the old iteration of the Public Hospitals Act.

My concern, and this is the point I made earlier, is that as you listen to the rationale that the parliamentary assistant puts forward, which is, for the purposes of hospital restructuring, you need to be able to move in quickly and use these powers, then I think you should listen to the people who have come forward who have said, "If you're going to do that, whether it's with respect to the establishment and the role and mandate of the commission, whether it's with respect to the minister's powers under section 6 or whether it's with respect to the minister's powers to appoint a supervisor under section 8, these powers should be sunsetted after four years as they relate to hospital restructuring."

I might even have concerns about that, but what I'm suggesting to you is to be consistent in your response to the concerns that we have heard and to be consistent with your parliamentary assistant's only defence that she ever puts forward for any of these issues, and she just clearly did it again in articulating the need for this particular section, your ability to do what you want in the way you want it with respect to hospital restructuring, but sunset it in four years and return Ontario to the regime of some due process for hospitals as they are looking to deal with the ministry around disputes, around issues of quality of care, quality of management, proper management etc.

I don't think I need to go on any more than that. I think that point has been made. I have not heard any commitment from the parliamentary assistant that you will in fact sunset these provisions and return to the old provisions of the act after four years. I've only heard over the course of the morning a rationale come forward from the parliamentary assistant with respect to restructuring, and when she deferred to the ministry, a response from the ministry totally unrelated to restructuring and a desire to have these powers because they've come perilously close in the past to wanting to use something like this. I don't think that's good enough and I don't think the process has provided us with appropriate answers.

I had been hopeful from some of the discussions that I had at the beginning of the lunch break that the government members were listening, were in fact going to move a motion of sunset, but I have not been informed that that's the case, so I will have to vote against this.

Mr Phillips: Just briefly, because we have a motion dealing with this as well, as I've said before, I used to be chairman of a hospital. For a government that purports to have a lot of confidence in people and local autonomy and, surely, individuals whom the community has selected to be involved in its hospital, you frankly show a complete disregard for those people with unilaterally moving in, appointing a supervisor and giving the board relatively little opportunity for any input into it.

All you can do, when you see a motion like this that essentially gives the minister the power to send his boss in there to do his work—you really don't care about the local boards and the local community and you'll do whatever you want, so it is another example in this bill of either incompetence, you don't what you're doing, or that you truly do want dictatorial powers to manage this. I see here where you'll give 14 days' notice before the czar arrives in town, but I think the local hospital boards are deserving of a little more than this treatment.

Mrs Caplan: I've placed this question before, and that is, why did you opt for 14 days as opposed to the 30 days?

Mrs Johns: The minister looked at the alternatives on how long he thought the board would need to make presentations if there was something it wanted to talk about. We also considered the quality care issue—if there was some reason why there was a supervisor, it may mean that there was a quality issue—and how long we wanted to let that situation slide. So it was a culmination of a number of different issues on top of the issue, of course, of expediting the restructuring process so that we

could move ahead quickly to be able to deal with consolidation of services, amalgamation or closing.

Mrs Caplan: It's interesting that you mention the quality issue, because under the existing legislation, that issue is addressed with the appointment of an inspector who first has to do a report that you have a quality problem. How would you determine that you have a quality problem under this new provision which does not require an inspector's report to alert you to that? Are you suggesting perhaps that any patient could just phone and say, "I think there's a quality problem," and the minister notifies them, "In 14 days I'm sending in a supervisor," without any inspector's report?

Mrs Johns: I'm going to defer to the ministry.

Mrs Caplan: No, you said the minister had decided.

Mrs Johns: No, I'm going to defer to the ministry.

Mrs Caplan: Okay.

Mr Finkle: I guess it's the appointment, not of an inspector but of an investigator.

Mrs Caplan: An investigator.

Mr Finkle: There are still provisions in the act to appoint an investigator to investigate quality problems. There's nothing to stop that. There's just a disconnect between the need for an investigator step to precede the appointment of a supervisor.

Mrs Caplan: But it is true that this act means you don't need the investigator step.

Mr Finkle: That's right.

Mrs Caplan: And that this appointment of the supervisor that the minister now says, through the parliamentary assistant, should be able to go in on 14 days' notice to a hospital board could happen without an investigator's report?

Mr Finkle: Prior to the appointment, there would be a notice of 14 days. So there would not be an appointment.

Mrs Caplan: Prior to the appointment of a supervisor. But the notice of appointment of a supervisor could be made without an investigator's report.

Mr Finkle: That's right.

Mrs Caplan: So why then, given the fact that the existing legislation that allows you to send in an investigator, that requires an investigator's report where there are concerns about quality of patient care and/or breach of fiduciary responsibility by a board—those are existing powers in the Public Hospitals Act. Upon the receipt of that investigator's report, the minister must give 30 days of his intention to send in a supervisor. What is wrong with that process? Outside of your restructuring, what quality concerns cannot be addressed by that process, which frankly has worked extremely well in this province? Why are you throwing all of that aside in favour of a process where you can give notice that in two weeks, 14 days, a supervisor is going to come in and wipe out the voluntary governance of that board? Outside of your restructuring process, why do you want to do it that way?

1420

Mrs Johns: We're setting up a process that will be the same, so we're setting up a process also for supervisors that allows for restructuring. We believe that 14 days is the appropriate time for that.

Mrs Caplan: You haven't answered my question. What's wrong with the existing process as it relates to the quality concerns that you had? You said this may be because you have quality concerns. What's wrong with the existing process that is in place? Please tell me what problems you have had with the existing Public Hospitals Act in dealing with quality concerns.

Mr Finkle: There are two routes open to look at a quality issue. Cabinet may appoint an investigator to investigate quality issues at a hospital and they will report back to the minister and cabinet and then it may be necessary to appoint a supervisor. That's the current process, but they're connected. There may be instances where you have to appoint a supervisor without the need for an investigation, such as when a board fails to achieve a quorum in making decisions; effectively, if there's been a resignation.

Mrs Caplan: We've already said that in a case where a board resigns completely we certainly understand the need to immediately appoint a supervisor. That's provided in Bill 26, so that's not what this is. My question is, what is wrong with the existing process?

Mrs Johns: I just have to say—

Mrs Caplan: Let me just clarify. The parliamentary assistant said the reason that you want to be able to send in a supervisor in 14 days to take over any hospital in this province is because you might have quality concerns that can't be addressed by the existing Public Hospitals Act. I'd like you to cite a case where the existing process hasn't worked. What's wrong with requiring the minister to send in an investigator where there's a quality concern, having that investigator share that information with the board, letting the board as it exists today either resolve that problem or the minister has the right to notify them, when he receives that investigator's report, that he is going to send in a supervisor?

Let me tell you something. I sent in investigators. I'm very familiar with the way that process works. I never had to send in a supervisor because it was resolved by working with the voluntary board that cared as much about quality of care as I did. Your suggestion that voluntary governance doesn't care about quality is an insult to those people.

Mrs Johns: I never said that.

Mrs Caplan: Well, you are. You're saying you want to be able to send a supervisor in, on 14 days' notice, to a voluntary board because you might have concerns about quality of care.

Mrs Johns: Or restructuring, or a number of different issues I mentioned.

Mrs Caplan: No, no. I'm dealing with quality. We'll talk about restructuring in a minute. I'm now dealing with your concerns strictly about quality. You made that statement, Mrs Johns. If you want to retract it, you retract it, but you have now insulted every hospital board in this province by saying that the minister should have the power to send in a supervisor on 14 days' notice without an investigator's report if he has a concern about quality. That's what you said. Do you want to retract it?

Mrs Johns: I believe that 30 days is a long time to delay action where there's a quality issue. I've said that.

If my mother was in that hospital and there was a quality issue, I believe it's too long to wait.

Mrs Caplan: But you're not taking any action. You're sending in an investigator under the Public Hospitals Act who can take immediate action to solve that quality problem in cooperation with voluntary governance. For you to say—

Ms Lankin: This is a real issue.

Mrs Caplan: This is a real issue, because this is the threat to voluntary governance. This is a very serious real issue; it's not a joke. Do not make light of it, Mrs Johns.

Mrs Johns: Who's suggesting we're making light of it?

Mrs Caplan: You have said it's not your intention to threaten voluntary governance in this province. The Ontario Hospital Association and many hospitals have warned you, and it is exactly the attitude you are portraying today, that the voluntary governance doesn't care as much about quality in those hospitals as you do and as I do. Let me tell you something—

Mrs Johns: We're giving the board 14 days to take action to solve the quality issue. I think that's long enough when people's health is in danger.

Mrs Caplan: Under the existing Public Hospitals Act, action can be taken immediately upon the appointment of an investigator.

Ms Lankin: Absolutely. You are misleading people with bullshit.

Mrs Johns: There's no action that can be taken from an investigator. It's a report.

Mrs Caplan: Investigators work with those voluntary boards and take immediate action to correct quality problems. That's because those voluntary boards care as much about quality assurance as anybody else in this province.

The Chair: Excuse me, Mrs Caplan.

Mr Joseph N. Tascona (Simcoe Centre): On a point of order, Mr Chair: This is supposed to be a debate, and other members jumping in and getting very personal—I don't think we're even debating the motion here.

Mrs Caplan: We are.

Mr Tascona: No, you're not.

Mrs Caplan: That's what we're doing.

Mr Tascona: I think it's highly uncalled for and the conduct of Ms Lankin should be withdrawn. At least an apology would be in order.

Ms Lankin: I think that I used a profanity, and for using a profanity in the presence of Mr Tascona I apologize deeply. It's still not true, what the parliamentary assistant is saying.

The Chair: Thank you, Ms Lankin.

Mrs Caplan: If it is true that you want this amendment for the purposes of restructuring, and restructuring alone, then why will you not sunset it?

Mrs Johns: We can go to an investigator if that is the process we choose to follow; we have that option. If we feel we have to go to a supervisor, we want to go in in 14 days.

Mrs Caplan: You didn't answer my question. My question was, if you want this supervisor for the purposes of restructuring only, why won't you sunset this provision?

Mrs Johns: I believe we have answered this before. The government is not prepared to sunset this section.

Mrs Caplan: Then what I'm telling you—pay attention—is that this provision undermines voluntary governance. Your comments today have insulted every voluntary member of a public hospital's board, because what you have said to them is that you care more about quality in their hospitals than they do. What you've said today gives credence to the concerns that the Ontario Hospital Association made.

I'll tell you something. I was going to support this motion on the basis that it was better than nothing, but in fact it's worse than nothing, because this does not relate just to restructuring. It will not be sunsetted and it will forever change the relationship with public hospitals in this province, because you will with this power, forever—"you" being the Ministry of Health—be able to send a supervisor in to take over any hospital in this province on 14 days' notice for any purpose, and that's fundamentally going to change the way hospitals are governed in this province.

Volunteers will not only feel insulted, but let me tell you something: They will not want to serve, not if it means that the minister can walk in and take them over without even the courtesy of any kind of process to determine that they've done anything wrong, which the investigator has to do under the existing Public Hospitals Act: It's not optional; you must send an investigator in before you send in a supervisor.

This bill says you no longer have to send in an investigator. Do you realize that? Do you realize it means you don't have to have an investigator?

Mrs Johns: I think I've already stated that I realize that.

Mrs Caplan: I can't support this.

Mrs Ecker: I do believe that there is a check within this particular motion. It talks about when it is "in the public interest to do so." One of the motions that will be coming up shortly, which has been put forward by the Liberals, I believe Mrs Caplan, talks about defining the public interest a little more carefully. I would like to ask Mrs Caplan if it would assist her in any way, if we were to adopt her motion on public interest, to define it, to put whether that provides an appropriate check. I believe there may well be circumstances when, as it says, "the quality of the management and administration" is in question where the ministry does need to act quickly. I think we all agree that the volunteers who run those boards out there are very committed to the care within those hospitals and those facilities, but we also know that there may well be a circumstance when action is necessary.

I believe this is the kind of thing that is a last resort, only if necessary, and if there's an appropriate check and balance within the system, which is something we are trying to do, it might well be more acceptable to Mrs Caplan. I would put that question to you.

1430

Mrs Caplan: I'd be pleased to answer that question. The motion that I put forward to define the public interest I think is going to marginally improve the minister's decision-making ability. It will mean that, as well as all of the other broad range of possible things he might

consider, at least he's going to have to consider access to services, which was left out of your motion. So it's a small step, but some damage control. That's what it is. The difference between his ability to make decisions in the public interest and having some due process which will maintain the relationship that has served the province well over many decades—let me explain what that process is and why I think the relationship that exists is important.

The government of Ontario does not run the hospitals in this province. With the exception of the psychiatric hospitals, they are run by volunteer boards of directors called hospital trustees, hospital governors, hospital boards of directors. They are primarily under the Corporations Act and they are a private, not-for-profit corporation run by volunteers. They give of their time for no pay, like my colleague Mr Phillips did, on a hospital board because they care about their community and they care about the quality of care and the good fiscal management of that hospital.

In the past, over many decades, we have had some problems, and the response from the Minister of Health has been to send in an investigator to see whether the concerns are valid and justified, and usually, Mrs Ecker, through the investigators' duties those problems have been resolved because those hospital boards care about the quality of care for the people in their community and the patients in their hospitals.

I can only think of one or two rare occurrences where supervisors have actually ever been sent in. So I would ask you if you could give me an example, in the last two decades, of where a supervisor had to go in more quickly than the Public Hospitals Act permitted, where patients were left in jeopardy because the minister couldn't act unilaterally to send in a supervisor in 14 days. Just give me one example of where you think the present act has failed to protect patients in hospitals. If you can do that, if you can give me that example, I certainly would reconsider my position.

I can tell you I was Minister of Health for three years. I'm very familiar with the history of the last two decades. I believe the existing Public Hospitals Act defines a relationship that confirms the right of voluntary governance to run those hospitals, manage them in the best interests of their community and of their patients, and I respect the role of voluntary governance.

When the Ontario Hospital Association comes before this committee and says, "We fear that the new powers of the minister are threatening voluntary governance," when they say that they see for the first time in the history of this province that the Minister of Health will have powers to micromanage hospitals, and when I hear the parliamentary assistant talk about the concern that voluntary governance doesn't share the minister's concern for quality and will not act quickly enough, that the minister must be able to send in a supervisor on 14 days' notice without any due process and without any appeal, then those principles of due process, natural justice, will lead us to a fundamentally different way of governing our hospitals in the future.

No, Mrs Ecker, I don't think that my damage control motion to improve the public interest requirements that the minister must consider will fix that problem.

The Chair: Thank you, Mrs Caplan.

Any further discussion on this particular amendment? Shall the amendment carry?

Ayes

Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Cooke, Lankin, Phillips.

The Chair: The amendment carries.

The next amendment we will deal with is Liberal amendment 36A. Mrs Caplan.

Mrs Caplan: This is to section 8 of Bill 26, which is section 9 of the Public Hospitals Act.

I move that section 9 of the Public Hospitals Act, as set out in section 8 of schedule F to the bill, be amended by adding the following subsection:

"Limitation

"(1.1) The Lieutenant Governor in Council shall not appoint a hospital supervisor under this section unless, at least 30 days before making the appointment, the minister gives the board notice of the appointment of the hospital supervisor.

"Notice

"(1.2) A notice of appointment of a hospital supervisor shall include the reasons for the appointment and shall inform the board that it is entitled to submit a notice of objection to the appointment to the minister within 10 days of receiving the notice.

"Right to object

"(1.3) Within 10 days of receiving a notice of appointment of a hospital supervisor, the board of the hospital may submit to the minister a notice of objection to the appointment of the hospital supervisor in which the board shall set out the reasons for its objection.

"Response

"(1.4) Within 10 days of receipt of a notice of objection, the minister shall give the board a written response informing the board of the Lieutenant Governor in Council's decision to either confirm the appointment of the hospital supervisor or not to proceed with the appointment and giving the reasons for the decision."

In speaking to the amendment very briefly—

The Chair: Mrs Caplan, this does deal essentially with the same issue we've just discussed at length.

Mrs Caplan: And this would solve the problem that the other amendment did not resolve.

The Chair: If I could just maybe suggest that we don't dwell on it a long time because the arguments basically are the same.

Mrs Caplan: That's right. The remarks that I made to Mrs Ecker in fact would be resolved by this motion. This puts in place due process. It requires 30 days. It requires the minister to give reasons as to why he's appointing a hospital supervisor. They might be quality reasons; they might be restructuring reasons. It requires reasons. It allows the voluntary governance of the hospital to object to a notice, and a decision of the minister would take place 30 days later. I suspect they will not accept this, even though this at least would fix the problem as I outlined it to Mrs Ecker. I'm not going to waste my voice.

The Chair: All those in favour of this amendment?

Ayes

Caplan, Cooke, Lankin, Phillips.

The Chair: All those opposed?

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment does not carry.

The next amendment we'll deal with is a Liberal amendment.

Mrs Caplan: Once again, in trying to put some limitations, I move that subsections 9(3), (4) and (5) of the Public Hospitals Act, as set out in section 8 of schedule F to the bill, be struck out and the following substituted:

"Duty of hospital supervisor

"(3) A hospital supervisor appointed for a hospital shall give advice and guidance to the board and the administrator of the hospital for the purpose of improving the quality of the management and administration of the hospital and the care and treatment of patients in the hospital.

"Duty of board and administrator

"(4) It is the duty of the board and the administrator of a hospital to receive and consider the advice and guidance of a hospital supervisor appointed for the hospital.

"Action on behalf of board, etc

"(5) Where a hospital supervisor appointed for a hospital requests in writing that the board of the hospital or the members of the corporation that owns or operates the hospital do any act that they have authority to do and, in the opinion of the hospital supervisor, they fail to do so, the hospital supervisor may do the act on behalf of the board or the members of the corporation and the act is as effective as if done by the board or the members of the corporation, as the case may be."

In speaking to this amendment, and I will be very brief, this amendment would have the powers of the supervisor returned to what they are now, namely, initially to advise the board. The board must then consider that advice. Only after this can a supervisor act as the board. The notion here is to create a condition of working together and negotiating solutions, as opposed to having supervisors walk in with the big stick of authority and effectively end voluntary governance in this province. If a supervisor can walk in and overturn board decisions and overturn their existing decision-making, you will have undermined voluntary governance in this province.

1440

You'll notice from this amendment, Mr Chairman and members of the government caucus, that we're not saying you shouldn't have the power to send in a supervisor. We think you should, even though it's a power that has been rarely used in this province, but if you're going to send it in, the duties and responsibilities and the due process by which those decisions are made must be clarified. That's all this amendment does.

The Chair: Any further discussion on the amendment?

Mrs Johns: Within this motion Mrs Caplan has suggested that the government is undermining volunteerism, and that is just not the case. What we're doing is we're saying that voluntary reactions from a board are what is best in any circumstance and we will abide by that. But in specific circumstances ie, a restructuring, if we start to go through the process of appointing a supervisor, asking him to send letters to the board to try—all of those things that we're asking for in here that used to be like the old process, it will not expedite the restructuring process. So we are opposed to the motion.

Mrs Caplan: Speaking to that, to the parliamentary assistant: Let me ask you again. Are the powers of the supervisor limited only to restructuring?

Mrs Johns: No.

Mrs Caplan: Are the powers of the supervisor sunsetted along with the commission?

Mrs Johns: No.

Mrs Caplan: Then how can you possibly make the statement that you have just made when you're not prepared to limit the powers of the supervisor to restructuring? How can you make the statement that you've just made when you're not prepared to sunset the powers of the supervisor?

I don't understand how you can make the statement that you just made that says that the supervisor is for the purpose of restructuring when this is a substantial change to the existing Public Hospitals Act and will allow the minister to send in a supervisor to overturn decisions of the board on 14 days' notice if the minister at any point in time in the future unrelated to restructuring decides to do it? Would you answer that question?

Mrs Johns: As you know, we intend to use the supervisor rarely, but we do intend to have the ability to have the supervisor and we believe that in some very rare circumstances through restructuring over the next four years we will need the supervisor to be able to have the power to restructure the hospitals.

Mrs Caplan: Then why wouldn't you scope the supervisor's power and limit supervisors to be sent in only for the purpose of restructuring and why won't you limit those powers and sunset them?

Mrs Johns: I think we've been through this debate before.

Ms Lankin: It doesn't mean you've given us an answer.

Mrs Johns: It doesn't mean you've accepted my answer. There's a big difference there.

Ms Lankin: No, there's a big difference—

Mrs Caplan: Clearly, Mr Chairman, the parliamentary assistant can't answer because there is no logical answer. What they are saying is: "We want to amend the Public Hospitals Act forever. The powers will not be used simply for restructuring, but whenever we answer a question on why we're doing it, we're going to relate it to restructuring."

If you were being honest about your intent, then you would accept an amendment that scoped the powers to restructuring, and if you refuse to do that, people will know you are being dishonest.

The Chair: Any further discussion on the motion?

Ayes

Caplan, Cooke, Lankin, McLeod, Phillips.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Tascona, Young.

The Chair: The amendment does not carry.

The next amendment we will deal with is also a Liberal amendment, Mrs Caplan.

Mrs Caplan: Yes. I've put in a replacement motion and I understand that the government is going to be supporting this. This is the definition of the test of public interest and this motion is an attempt at damage control, and I'll tell you exactly why, and that is that the existing Bill 26, as it stands right now, has some things that the minister must consider when he is deciding if it is in the public interest to do so.

The Chair: Excuse me a second, Ms Caplan. Could you read the amendment into the record, please?

Mrs Caplan: I will read it in, yes. Thank you.

I move that subsection 9.1(1) of the Public Hospitals Act, as set out in section 8 of the schedule F to the bill, be struck out and the following substituted:

"Public interest

"9.1(1) In making a decision in the public interest under this act, the Lieutenant Governor in Council or the minister, as the case may be, may consider any matter they regard as relevant including, without limiting the generality of the foregoing,

"(a) the quality of the management and administration of the hospital;

"(b) the proper management of the health care system in general;

"(c) the availability of financial resources for the management of the health care system and for the delivery of health care services;

"(d) the accessibility to health services in the community where the hospital is located; and

"(e) the quality of care and treatment of patients."

Where this departs significantly from what is in Bill 26 is that it ensures that the minister must consider access to health services in the community where the hospital is located. The concern that I have with Bill 26 is that the minister doesn't have to consider access. He could close a hospital, he could restructure, without having to take into consideration the ability of people in the community where that hospital is to access the services they're going to need.

This is not going to fix this bill, I want to be very clear. I have real concerns about the minister being able to act wholly when he thinks it's in the public interest, and in most cases we can't challenge his decision. It doesn't even have to be approved by cabinet. It's his decision alone. But what I'm very concerned about is that he wants to do that, or wanted to when he tabled Bill 26, and would have been able to if it had been passed before Christmas. He would have been able to consider the public interest without having to think about whether or not, if he closes a hospital, those people would have reasonable access, as required under the Canada Health Act, to services.

It is true that what he may decide is good access, the community may disagree with him, and I suspect that may happen, but at least we will know, if this amendment passes, that he will have to consider access to services as part of his public interest test. This is strictly damage control. It doesn't fix the bill. This only lists the things he must consider, but ultimately, at the end of the day, this amendment says that the minister or the cabinet "may consider any matter they regard as relevant." I do have real concerns about that and I want to be on the record as stating that. That's it.

Mrs Ecker: I speak in support of this Liberal motion, although I don't think I would characterize it quite the way Mrs Caplan has characterized it. It's interesting to note though, Mrs Caplan has talked about giving examples for what's perhaps happened in the last two decades in the hospital sector. I think if there's one thing that's been made very clear by many of the presenters who have come forward it's that the next couple of years or decade or whatever in the hospital sector are going to be very unlike what the last two decades have been like.

We're going to be faced with major restructuring. We are talking about things within health care and the hospital sector now that would have been, even five or six years ago, unthinkable to talk about in terms of the need to merge and amalgamate and do a lot of the things that many hospitals are doing. So I would submit that this is a very unusual time and a very difficult time that the health care system and the hospital sector are going to be going into. I think that means that the legislation must be prepared to react and to allow the government to cope with that.

We've seen how many other jurisdictions have brought in legislation which I think some people would consider quite draconian. We've had the lawyer, Ms McKeogh, read into the record some of the things that other provinces have had to do. They've talked about absolute discretion, in the opinion of the minister, in the public interest, and all sorts of powers that they felt they needed to do in their restructuring exercise. I would submit too that many of those province are a lot further ahead than Ontario is, and it's unfortunate that it is taking this time, but we are getting on with that job.

I think this particular amendment will assist in putting forward a definition of public interest that will help ensure that people understand the point and the objective of what the minister is doing. It will provide appropriate guidance to the government in the exercise of that power. So therefore I am quite ready to support this motion.

Mrs Caplan: I'll just make one or two very brief comments. I want to agree with Mrs Ecker that we are about to see something we have not seen in Ontario since Frank Miller tried to close hospitals. That was a decade ago. The difference is that this time it's being done because you are cutting \$1.3 billion from the hospital transfer account over a very short period of time, three years. By the way, that's after your Premier promised "not one cent." Let me point that out to you.

1450

There were pressures for restructuring. I want you to know there were pressures for restructuring and I have been talking about restructuring since 1987. We all agree.

But what has created the crisis and what is going to create the chaos and what is going to make it, I would say, almost—I'm trying to find a word that is reasonable in its context and still parliamentary. But what is going to make it so horrible, and I think "horrible" is the right word, is that it's happening because you are cutting \$1.3 billion from the hospital budgets of this province, something which is unheard of in Ontario, and you're doing it to fund a tax cut that's going to cost you \$5 billion. We know that that is what is driving your vision. What's driving your vision is the need to free up dollars for a tax cut.

If you were to ask the people of this province whether they would like to see orderly restructuring of their health system and the development of a true system or whether they want to see the chaos and the fear and the unprecedented—your words—actions of the next few years in the name of giving them a tax cut, I think that you will hear them when they call your constituency office to tell you how they feel about that, because you are making a difficult situation worse by your cut of \$1.3 billion to the hospital transfers, and you're doing that after the Premier promised stable funding, which was a flat line.

He was very clear about his commitment to hospitals. We all knew it needed to be restructured, but nobody in their right minds ever dreamt that Harris's Conservative government would force the kind of restructuring as rapidly as Mrs Johns says you're going to have to do it, and that's because you are cutting so much out of that transfer payment so fast.

Mr Young: Mr Chairman, on a point of order: Are we debating the motion?

Mrs Caplan: Yes, we are. I'm responding to exactly Mrs Ecker's statement.

The Chair: Are you finished, Mrs Caplan?

Mrs Caplan: Yes, I'm just about finished. In fact—

Mrs Ecker: Promise?

Ms Lankin: She would have been if you hadn't done that.

Mrs Caplan: That's right.

Mrs McLeod: She had actually wrapped up. Don't bait the bears.

Mrs Caplan: I'm concerned that the new members of the Conservative caucus don't understand what's happening. You have hospitals in your community. Wait till they call you. Let me tell you something, what you are about to embark on to free up dollars for your tax cut, the forced restructuring in a very few short years in this province, will not only be your legacy, but I'll tell you something, it is going to anger and frustrate everybody in this province because you are doing it with limited accountability, limited to no process, limited ability for the community to participate and you are taking away most of the natural justice provisions and rights of individuals in this province.

If you think, Mrs Ecker and members of the Conservative caucus, that that's the way to govern, if you think the people of the province want that and are willing to pay that price for a tax cut, let me tell you something: You're making a big mistake. This definition of "public interest" isn't going to fix it.

The Chair: Shall the motion put forward by Mrs Caplan carry? All those in favour? All those opposed? The motion carries unanimously.

The next amendment we will deal with is a Liberal amendment, number 36D. Mrs Caplan.

Mrs Caplan: Yes, we're ready.

Mr Phillips: There it is. I want one in my name, though.

Interjections.

Mrs Caplan: Golly, we keep trying. This one's a short one, schedule F of the bill, section 8.

I move that subsection 9.1(2) of the Public Hospitals Act, as set out in section 8 of schedule F to the bill, be amended by adding "done in good faith in the performance of a power or of an authority under either of those sections" at the end.

Very briefly, this amendment limits the protection against legal proceedings for the crown and the minister to acts done in good faith. Where I referred previously to the fact that nobody could sue the minister, he had freedom from accountability through actions in the courts, I could see where there is a real need to have that limited to acts done in good faith. At least then, people would have the right to take him to court if they think he didn't act in good faith.

I would suggest that it would be very difficult in most cases for you to prove the minister didn't act in good faith, so again, this is going to be small comfort, but it will open up the right of individuals to sue the minister if they think the decision was made where he didn't act in good faith. It's simple, it's clear, it restores some natural justice. Even though there's no due process here, it does restore the right to sue where you believe that an act was not done in good faith. I'm hoping that they'll support this.

Mrs Johns: I was wondering if we could stand this down. We want to have another look at it after that explanation, please.

The Chair: All agreed? Agreed.

The next proposed amendment is Ms Caplan's.

Mrs Caplan: Again, to schedule F of the bill:

I move that subsection 13(1) of schedule F to the bill be struck out and the following substituted—

The Chair: Excuse me.

Mrs Caplan: Is there something in between?

The Chair: No. Actually, I got a little bit behind there. That finishes us, all we can do with section 8.

There are no amendments in sections 9, 10 and 11.

Shall sections 9, 10 and 11 carry?

Mrs Caplan: The point I'd just like to make on this is, my sense of this was that amendments wouldn't fix any of this, so I'm not going to be supporting these sections, but you can call them.

The Chair: Actually, we can add 12 to that too; 9, 10, 11 and 12.

Mrs Caplan: I'm happy to debate why I'm not satisfied with them, and that's because it deals with a number of things that we tried to amend under section 8, but since we weren't successful—

Interjection: What about 12?

The Chair: The amendment is to 12.1. It's a new section being proposed. I'll ask the question.

Shall sections 9, 10, 11 and 12 carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Cooke, Lankin, McLeod, Phillips.

The Chair: Sections 9, 10, 11 and 12 carry. There's a new proposed section 12.1.

Mrs Caplan: I move that subsection 13(1) of schedule F to the bill be struck out and the following substituted: "13(1) Clause 32(1)(d) of the act"—

The Chair: Mrs Caplan, I don't believe that's 36E.

Mrs Caplan: I skipped it. Okay. Oh yes, that's the big one. Right, I skipped one page. Sorry, Mr Chairman, I apologize.

Schedule F to the bill, section 12.1, section 31.1 of the Public Hospitals Act.

I move that schedule F to the bill be amended by adding the following section:

"12.1 The act is amended by adding the following section:

"Definition

"31.1 (1) In this section, 'personal information' means personal information as defined in subsection 2(1) of the Freedom of Information and Protection of Privacy Act.

"No disclosure

"(2) No person shall disclose personal information obtained in the exercise of function under this act except in accordance with this section.

"Exception

"(3) Subject to subsection (4), a hospital supervisor, an inspector designated under section 18 or other person exercising functions under this act may disclose personal information obtained in the exercise of those functions,

"(a) with the consent of the individual to whom the information relates; or

"(b) where necessary for the purposes of detecting fraud under this act or for the purposes of disciplinary proceedings under an act referred to in schedule 1 to the Regulated Health Professions Act, 1991.

"Deletion of name, etc.

"(4) A person who discloses personal information under subsection (3) shall, before disclosing the information, delete the names of any individuals and any other identifying information from the information to be disclosed unless the disclosure of a name or of the identifying information is necessary for the purposes of detecting fraud under this act or for the purposes of disciplinary proceedings under an act referred to in schedule 1 to the Regulated Health Professions Act, 1991.

"Transfer of medical records

"(5) Where a direction is made under subsection 6(1), (2) or (3), the administrator of the hospital that is the subject of the direction may transfer medical records kept in his or her custody under section 14 to the administrator of another hospital or to such persons or entities as may be prescribed and subsections (3) and (4) do not apply to such a transfer."

In speaking to this, this is what the privacy commissioner recommended when the minister told him that he wanted the ability to have access to files for the purposes of fraud. The commissioner appeared before us. He has negotiated with the ministry. However, I feel that we should table what the privacy commissioner instructed the minister to do and see if they will support that or if they insist on having their own way.

Mrs Johns: I'd like to defer this question to Ella Schwartz. She's the legal counsel who has been dealing with the Information and Privacy Commissioner.

Ms Ella Schwartz: I've been asked to read this into the record. Tell me if I'm not speaking loud enough.

"Ministry staff have met with the Information and Privacy Commissioner or his staff five times since the introduction of Bill 26. There has also been continuous discussion by phone during that time. The Information and Privacy Commissioner sent the minister a letter on January 16 in which he thanked the minister and his staff for their discussions. He said that it had been extremely helpful to hear a description of the issues faced by the ministry in managing the health care system. In his appearance before this committee this past Monday morning, he repeated that view.

"None of the ministry amendments to the Ministry of Health Act or the Public Hospitals Act affect privacy in any way. The Information and Privacy Commissioner did not propose any amendments to these acts. The ministry's amendments and the IPC's amendments are all related to the collection, use and disclosure of personal information by the ministry. Public hospitals are not part of the ministry. Medical records in a public hospital are protected by regulation under the Public Hospitals Act."

Having said that, I want to reiterate the minister's commitment to the health records privacy review. In the course of our work on that review, we will be looking carefully at the protection of medical records wherever they may be. Medical records in public hospitals are an important part of our concern.

Ms Lankin: I appreciate that contribution from counsel. You reasserted the minister's commitment in terms of the review of health privacy. I had understood, actually, from the privacy commissioner that the minister had committed to a comprehensive piece of legislation with respect to health information privacy. Is that correct?

Ms Schwartz: On the record? Yes, we're committed to legislation.

Ms Lankin: Could I just get Ms Johns to repeat that, so we've got it not just from ministry counsel but from the parliamentary assistant?

Mrs Johns: Yes, that's correct, Ms Lankin.

Mrs Caplan: The only point I would make is I want to thank the counsel for recitation of some of the history, but what you've told me is that in fact there is a problem with this act without some privacy protection. We are proposing this as an interim measure until your legislation comes forward. You have other areas where you've put in Band-Aids. This is another Band-Aid, and we think it's appropriate to put it in—it can't hurt—until you get your legislation in place, because we have no idea how long that's going to take.

Certainly the question I would ask is, new legislation would supersede this, but would you consider putting this in, Ms Johns, as an interim protection of personal privacy of hospital records? This is interim; I recognize that. But there's nothing there now and there is a problem. The act is open, we have a chance to do a little bit while we wait for your new legislation. If you care about it, why wouldn't you just let this go in as an interim measure, a Band-Aid?

Mrs Johns: According to legal counsel, there's a whole new set of implications associated with this section, implications with respect to hospitals and their medical records, and as a result of that, we will not be supporting this at this time. We will wait to see what the commissioner would like us to put in this new legislation and we will be handling it at that time.

Mrs Caplan: The last point I'd make is that I'm disappointed that you wouldn't consider this as an interim measure, because I think if there's anything that has galvanized public opinion against what you're doing in this bill, it has been individuals' concerns about access to their records. That's been primarily resolved to the satisfaction of the commissioner as a stopgap only, the fact that you're making some changes in the Health Insurance Act but you're not making any stopgap changes in the Public Hospitals Act, where clearly there are problems.

I'm disappointed that you won't accept this as an interim measure. I had hoped that you would and I think people are now aware that there are serious problems and therefore you better bring in that new legislation expeditiously. That's all I can say.

The Chair: Mrs Ecker, followed by Mr Clement, Mr Cooke, Mrs McLeod and Mr Phillips.

Mrs Ecker: I can sympathize with Mrs Caplan in that after many, many weeks when she's been holding up the privacy commissioner as the person we should be consulting with, as the person who should be making the judgement on this, we have in fact consulted very closely with the privacy commissioner and we have an arrangement that he feels is acceptable in terms of exercising his authority of protecting the privacy and confidentiality of individuals. I find it passing strange that she now cannot accept that.

I believe legal counsel has been very clear that there are protections for confidentiality under the Public Hospitals Act, contrary to what some critics would have had us believe over the past. I think this government has given a commitment to work with the commissioner to bring in privacy legislation, something which has been promised in the past under previous administrations but, with all due respect, has not, for many reasons, been achieved, and we hope to be able to achieve that, working closely with the privacy commissioner.

I do not believe that a stopgap measure, according to what I've heard from the privacy commissioner, is required at this time. I look forward, as a member of this government, to working closely with him to bring forward legislation, and therefore I will not be supporting this motion.

Mr Clement: I just wanted to get a confirmation from the legal counsel if at all possible. Did I hear from your remarks that, in your opinion, the current Public Hospitals

Act has provisions in it dealing with the protection of information that render this motion redundant or in another way not necessary?

Ms Schwartz: I'll turn that over to the counsel for the Public Hospitals Act.

Ms McKeogh: What I can confirm is that there is a regulation 965 that contains provisions in section 22 protecting the confidentiality of medical records. In so far as this motion goes beyond medical records I can't comment.

Mr Clement: That's personal information. But there is a regulation rather than a section in a piece of legislation, a regulation pursuant to that piece of legislation.

Ms McKeogh: There's a regulation under the Public Hospitals Act that deals with confidentiality of patient records.

1510

Mr Clement: I'm just having difficulty understanding. Since we have dealt with we think, and the privacy commissioner thinks, his concerns found elsewhere in this schedule and in other pieces of legislation that are up for review in Bill 26 and we have already in place what can be termed a stopgap in the current piece of legislation until we do have the much-heralded and necessary protection of medical records and other privacy issues legislation which we have undertaken again today to do, I'm at a loss as to why we want to include another section in another piece of legislation and overlegislate when we need not have to do that. I just don't understand.

Mr Cooke: I have one question, but I have one observation on the process of this particular piece of legislation and the concerns that were expressed right from the beginning with respect to privacy.

When Bill 26 was introduced into the House we started off by the Minister of Health saying, "These are illegitimate concerns about patient records being not properly protected and there's no reason to amend. Everything is adequately protected," then public opinion built fairly quickly, it became a political liability and the minister said, "There are going to be some amendments and we're going to take a look at that," and now we're to the point where we're going to have a whole new piece of legislation to maintain health privacy.

In the matter of about four weeks, if nothing else has come out of this process, we've got commitment from the government for a brand-new piece of legislation and an admission that there was a major, major mistake and that confidentiality of patients' records was at risk. They not only have to come in with the stopgap measures that Ms Caplan has referred to, but are going to have to come in with a totally new piece of legislation.

What I'd like to ask the PA is, there is some work that's been done in the ministry already on this, discussion documents and so forth. I'm wondering whether we could have those papers filed with the committee so that we could have a better understanding tabled with the committee, so that all committee members can take a look at that information and have a better understanding of the issues.

Mrs Johns: It's my understanding, Mr Cooke, that the documentation you may be talking about was done with previous governments and it may represent a different—

Mr Phillips: Party?

Mrs Johns: Yes, it would definitely represent a different party.

Mr Cooke: The issues would be the same, I assume.

Mrs Johns: It may not represent the way this government will proceed, but I'd be happy to share with you what is in those documents, if you'd like.

Mr Cooke: If we could have those tabled, I'm sure all of us would like to take a look at that. Then could we get an idea from you, since this has evolved over the last four weeks, what the time lines are in terms of legislation coming into the House.

Mrs Johns: Mr Wright suggested at the meeting on Monday that there would a time when there would be consultation and he suggested that he didn't know what the time line would be, so I really can't comment on that. I think he suggested that there would be consultation starting some time in the spring.

Mr Cooke: Can the ministry maybe indicate to us when they would be ready, when a draft piece of legislation would be ready?

Mrs Johns: I think they feel that consultation would have to go through before draft legislation. They don't know how long Mr Wright intends to have consultation go on at this time.

Mrs McLeod: Two questions, actually, in response to Mr Clement's query as to why we would want to propose a further amendment, why this is necessary—because the whole issue of privacy and access to confidential medical records has been a great concern of the public and is one of the reasons I think the government has seen fit to make amendments corresponding with what the commissioner has required, because the original legislation was bad legislation in terms of its invasion of personal privacy. There are two concerns we have specifically on this section, and I would ask Ms Johns, if you would like to refer to ministry counsel, if we're accurate on this.

The first is that this section of the bill does provide what I believe is a new clause that would allow regulations to be made regarding medical records, including their use and disclosure. That's the first question and that's one of the reasons why we wanted to present a section that would simply incorporate the same principles that you've seen fit now to incorporate in other sections of the bill that require consent or access to records for the purposes of investigating fraud and allow for the deletion of the name where records are accessed.

It's the same three basic principles that you've acknowledged in your subsequent amendments. We wanted them to apply to what we believe is a new clause that is essentially leaving the door wide open to regulations regarding new disclosure. Are we accurate in understanding that there is a new clause in this section of the bill?

Ms McKeogh: I'm sorry, I'm not sure which clause you're referring to.

Mrs McLeod: I find the numbering system of the act very difficult. It's a new paragraph 32. If you wish to stand it down, we can come back to it, but I would have thought that if there was a new clause added that you would aware of it. It's page 71 of the bill, and again I just find that that's the problem with the act. There's just so much and every single clause gives us cause for concern. Page 71, 32—

Ms McKeogh: It's reg-making abilities.

Mrs McLeod: Yes, "prescribing the purposes for which." We understand that's a new clause and that it therefore is unrestricted by any of the other limitations on disclosure that are being subject to future amendments.

Ms McKeogh: Yes, we'd better stand this down.

The Chair: This question has jumped us up several pages. Is it germane to the current amendment on the floor?

Mrs McLeod: Yes, that's the reason for the amendment. It addresses the new clause, which is what Mr Clement was asking, I believe, that is, why would we need to have a section here if the old act already provides for the—

Mr Clement: That was a question.

Mrs McLeod: It was, so I took it as a question; and again, we took the exercise of preparing amendments seriously. You can see the work that has gone into this. We believe we have a new clause that allows for access to medical records under regulation and that it deserves the same privacy protections that you have seen fit to put in amendments in other sections of the act.

Ms Schwartz: I'd just like to mention, though, that the motion that you proposed is similar to what the commissioners said on December 14. It's not similar to the outcome of the discussions we had with the commissioner. It's different from that. It's not the same as the motions we now have.

Mrs McLeod: Would you agree, however, that—

The Chair: Just on a point of interest, Mrs McLeod: We are dealing with the Public Hospitals Act.

Mrs McLeod: Right, exactly.

The Chair: The section you're talking about is up in the Independent Health Facilities Act.

Mrs McLeod: I don't believe so.

The Chair: Are they relevant? Do they bear a relationship to one another?

Mrs McLeod: In fact, Mr Chairman, I further wanted to raise the concern under this section of the act about the dealing with medical records in the event of a hospital closure, and this is particularly important and one of the particular reasons why this amendment is before the committee.

We do not have precedents for what the government leads us to believe is going to be a wholesale closure of hospitals and which, we are led to believe, is going to occur before any new privacy act can be put in place.

So the argument for protection—just on the same basic principles that you've acknowledged have to be put into other sections of the act later on, for the Public Hospitals Act, for access to medical records, for hospital records—

Mrs Ecker: So now you don't trust the commissioner?

Mrs McLeod: Mrs Ecker, the commissioner may not have been aware that there is a new clause nor seen the necessity of dealing with what the government has indicated in committee is going to be virtually immediate closures of hospitals before his new privacy act can come in. The commissioner made it very clear that he was not satisfied simply with amendments to this act as proposed. He wants a new privacy act. You've made the point yourself that there is to be new privacy act.

Our point is that, before that new act can be prepared, let alone presented and voted on, there may well be closures of hospitals. The issue of access to medical records is of concern to us in the event of a hospital closure. Our amendment speaks to that. In terms of the existing Public Hospitals Act—and that was my query—our understanding is a new clause has been added through Bill 26 which does open up the possibility of additional access to records and we just want these protections provided.

Mrs Caplan: To be helpful, Mr Chairman—

The Chair: The next speaker is Mr Phillips, followed by Ms Lankin, Mrs Ecker and Mr Maves.

Interjection: Are you going to jump in to the fray?

Mr Phillips: Yes, that's why I put my name on the list actually.

You're the counsel for whom? I'm sorry.

Ms Schwartz: I'm the counsel for the Ministry of Health, one of them.

1520

Mr Phillips: Have I interpreted what you said properly? That is, that the freedom of information commissioner has looked at this part of Bill 26, the amendments to the Public Hospitals Act. He's gone over the fact that we are going to be giving fairly sweeping powers to either the restructuring commission or what's called a supervisor to come in and essentially take over a hospital, but he's been through all of the provisions in Bill 26 around restructuring of hospitals and he's also looked at the freedom of information and privacy protections that exist and he told you he was satisfied that there is quite adequate protection.

Ms Schwartz: I can't speak to what he's looked at. I know what he proposed before the committee on December 14, and he did not at that time propose any amendments to the Ministry of Health Act or the Public Hospitals Act. He gave the ministry further proposals and he saw all the ministry motions that the ministry has tabled and he discussed them before the committee on Monday. He has never indicated to us at any time that he wants amendments to the Ministry of Health Act or the Public Hospitals Act. I don't know how he came to that conclusion.

Mr Phillips: Let me just make sure I'm interpreting you right. Did he say he had reviewed the provisions in the Public Hospitals Act and was satisfied that they provided adequate protection for freedom of information and privacy, recognizing the changes you're making to the hospital act? Did he tell you that?

Ms Schwartz: We discussed with him the proposals that he gave us. That's what we discussed with him, and those proposals did not contain the Public Hospitals Act proposals.

Mr Phillips: I'll ask the question again, because it's either: "Well, it never came up, so he must not have a concern" or "We discussed it. He's reviewed the privacy provisions there and he's quite happy." Which of those two is it?

Ms Schwartz: We did not discuss with him the Public Hospitals Act because he never rose it.

Mr Phillips: I wonder if I might be helpful here, Mr Chair, and that's that our concern is that he and all of us

have so much to do on this bill that we simply want to be assured we're interpreting you right. If he has reviewed the privacy protection and is happy, then frankly we're less concerned. But if he has focused elsewhere—so I think it may be useful if I could just move that this section be stood down, that the ministry phone the privacy commissioner—

Mrs Ecker: No.

Mr Phillips: Well, let me finish, because you may—

Mr Clement: We know where you're going.

Mr Phillips: How do you know where I'm going?

The Chair: Let him make the suggestion and then we'll decide.

Mr Phillips: Yes. I know you're very smart. You told us how smart you were this morning. Very smart. I hope the Premier's watching, because he's very smart; he told us that this morning.

But I go slower than you do and I don't think quite as quickly as you do. It would be very helpful for us, I think, if you simply went out in the hall, phoned the privacy commissioner and said: "I'm before the committee right now. I want to be sure that I'm interpreting you right, that you are satisfied with the privacy protection in the hospitals act." Because if he is, that is one thing. Right now, I hear from you that he has not raised the concern, and I'm not sure whether he's even perhaps had an opportunity to look at this provision. That's all we're asking, and it won't slow things down. We've got lots of work. We've got enough work to keep us busy here for the rest of the day. We can simply hold that off until 4:30 or 5 o'clock. So I'd like to move that, Mr Chair.

The Chair: Do we have unanimous consent to stand down this particular proposed amendment?

Interjections: No.

Mrs Caplan: Why not?

Mr Clement: Can I speak to that?

The Chair: Yes, Mr Clement.

Interjections.

The Chair: Okay. Mr Clement's going to tell us why not.

Mr Clement: I'd be happy to. I appreciate the intent of what Mr Phillips is suggesting, but I think the issue is crystal-clear. Mr Phillips was with us Monday morning at 9 am when the privacy commissioner took some time out of his busy schedule to share with us his comments respecting Bill 26. I have a copy of his comments. You may have a copy of his comments as well.

He made it very clear that he had reviewed schedules F, G and H and provided his comments in that context. If I may be permitted to paraphrase the privacy commissioner, he was ecstatic that we had a commitment from the Minister of Health that we move ahead with the separate privacy legislation respecting medical records and other like files. He then went through an analysis based on four principles which he held dear to his function in the Legislature and stated, if I may paraphrase again, that the minister's amendments addressed his concerns and he felt further comfort from the commitment to have the legislation.

I would note at the outset of my remarks, Mr Phillips, I said that he had reviewed schedules F, G and H. We are now on schedule F. He did not raise any particular

concerns about the Public Hospitals Act. So I think we have our answer.

Mr Phillips: You bring in an expert witness. I asked the expert witness what it was, because the expert witnesses had the detailed conversation.

Mrs Ecker: And she answered you.

Mr Phillips: What she said was she is not at all sure which of those—

Mrs Ecker: That's not what she said. She said this section was not discussed with the privacy commissioner.

Mr Phillips: You can ram anything through you want; just keep ramming it through. We're trying to be helpful here. The witness said, "We're not sure on that." We said, "Stand it down for half an hour and make a phone call." But if you're so determined to not want to listen to the possibility that you haven't understood this, fine. You just keep ramming it through and you people live with not only the incompetence, because that's what you're showing—total incompetence—but arrogance and dictatorialism. You are dictatorial.

The Chair: Any further discussion on the proposed amendment 36E?

Ms Lankin: I was on the list. What did you do? You probably recognized Ms Caplan at some point in time and got confused.

The Chair: Ms Lankin, my apologies. You are on the list.

Ms Lankin: Thank you very much. If I may ask a couple of questions to counsel on this, I understand the point that you're making, that you think he doesn't have any concerns because he didn't raise concerns on this. You said he raised all his concerns with you—

Ms Schwartz: I can't speak for him, but that's what I would assume.

Ms Lankin: Sorry?

Ms Schwartz: I can't speak for him, of course. That's what I would assume.

Ms Lankin: Right. One of the things that I've realized going through this whole process is that there's so much here that we discover things as we go along, even though we're some period of time into it. It may be the case that your assumption is right that he has no concerns, but let me ask between both counsel, because I think it involves both the privacy issues and the Public Hospitals Act: My understanding of the Public Hospitals Act in its original form—its present form before it's amended by Bill 26—is that there is a section 14 which sets out that any medical records or whatever are the property of the hospital and remain in the control of the CEO or something to that effect, something like that.

Ms McKeogh: Yes. It says, "The medical record compiled in a hospital...is the property of the hospital and shall be kept in the custody of the administrator."

Ms Lankin: Okay. That section remains in the act; that's not affected by Bill 26 at all. So when this is all said and done, that's still there.

Now, under the regulation-making powers, which is section 32 of the old act and the new act, there is a whole list of things that can be prescribed in regulation. From sort of a quick look at that, I don't think there is anything in the old section 32, under the existing Public Hospitals Act, that deals with issues with respect to disclosure of

information, but I may have missed that in my review of it.

Ms McKeogh: I think you're right. It's not specifically dealt with.

Ms Lankin: So the point that is being made, and irrespective of the actual amendment that's here, and the question that was being put forward to you that gives rise to the desire to have an amendment of this sort is that in Bill 26 you have some amendments to section 32, which is the section in which you can prescribe regulations. One of those amendments under 32(1) is subsection (t). Under subsection (t), there is a little subsection, sub-subsection—whatever the technical wording is—(iv).

If I could just try to put some language to what those numbers set out, section 32 gives the Lieutenant Governor in Council the ability to set things out in regulation. The various subclauses tell you the general area that you can set out in regulation. The key is "respecting matters that relate to or arise as a result of a direction under section 6 including, without limiting the generality of the foregoing, matters related to...."

If I can have folks stay with me here—you've got a bit of a debate going on at the table—that (t) relates to section 6, which if you remember is the section where the minister has the ability to order the closure, merger or amalgamation of hospitals.

1530

Mrs Johns: I remember it well.

Ms Lankin: You remember it well. "I remember..." There's a song like that, right? Someone should write a song.

We now have the Lieutenant Governor in Council able to write regulations—that means the minister takes it to cabinet and gets it approved—under clause (t) related to matters that arise from section 6, where the minister can close, merge or amalgamate hospitals. If you look at (t)(iv), you can see that one of the areas he can write regulations about is medical records, including their ownership, their custody, their use, their disclosure, their retention and their disposal.

I think I understand why that's there, because if you're going to close a hospital, what do you do with all of the information in the medical records that are there? It's a reasonable question. You've got section 14 in the act that says it's under the ownership of the hospital and under the guardianship of the CEO, any of those records, but if you close the hospital and fire the CEO, who's going to take care of the records? So you have to figure something out.

The problem that we have is that so far in the other areas that the privacy commissioner did raise concerns about, one of the things he has said consistently is that he wants to see some protections in legislation, not just in regulation. He's very uncomfortable with that approach. In some of the other acts he has set out some recommendations about what should be in, and the ministry, back and forth, went most of the way to meet his concerns—not all of the way.

What I'm wondering is, is there anything we can do in legislation here, as opposed to leaving it all to regulation, that helps give us a bit more comfort, given how volatile an issue this has been with the public, about what's going

to happen with these particular records, and that we don't just leave it to a process of someone writing regulations? I think it would be nice to have a bit more comfort in the legislation. If I may point out at 3:30 on Thursday, you have half an hour. I'm sorry; that's not meant to be facetious. This is one of the problems. We do need a bit more time.

I'd really like to see if there is something the government could agree to, because you've gone most of the way in addressing the concerns that the public had in the other acts. This issue didn't get surfaced early. It was sort of buried under the foofaraw around the other acts. Could we try and do something that would write some protections in the legislation and not just leave it to the regulations?

The Chair: Before that question gets answered, if I could just interject to remind all members about something, that the deadline set by order of the House for the filing of amendments in this committee is 4 o'clock today, by that particular clock up there. As we have—

Ms Lankin: I'm sorry, go ahead. I'd just like to raise a question in respect of that, though.

The Chair: I want to ensure that you're aware of that and that any amendments put forward after that time cannot be considered. So just a reminder.

Ms Lankin: With respect to that, you just raised that issue, and if I may, I am aware of that. I think most of us are aware of that.

I'd like you to tell me if there is any way this committee has any power, by unanimous consent, to vary that motion or the order in that motion that was passed by the Legislature, because I think we can see that we are still on schedule F. An open-letter request has gone to the government House leader to deal with the possibility of another week of clause-by-clause. While we still have a day and a bit here and we're coming across new things and we're looking at the possibility of amendments, it's barely possible to deal with this one we've got in front of us in 25 minutes, which is all the time we have left, and there may be some others that we come across.

What are you going to do if I make a very, very good, valid point that you agree with and it's five minutes after 4? So is there anything you can instruct us in terms of our options with the committee?

The Chair: No, there isn't. We are operating under the order of the House which instructs us, very specifically, how we are to conduct our business. As a committee, we have no ability to change any part of that order.

Ms Lankin: The only option this committee has, if there's anyone who thinks that I'm raising a valid point, is to forward a recommendation to the House leader that when he goes into the House on Monday, he vary the order—

Mrs McLeod: By unanimous consent.

Ms Lankin: —by unanimous consent, yes, that he vary the order in the motion that was passed.

The Chair: The only comment I can make on that is what I just said, and that is that we do not have any power as a committee to change the order.

Mrs McLeod: But we do have the power to express our concern.

Ms Lankin: My question to you is, if the committee felt that the points I'm raising are valid and that there are some real issues here and wanted to do something, you've indicated that we can't change the order itself here. I'm asking, what could we do? And I'm asking you if we could send a recommendation to the House leader that the order in the House on Monday be varied by unanimous consent.

I recognize we can't bind the House leader. The House leader would have to make a decision on that. There's another process going on here where there's been an open-letter request for a meeting with the House leaders to deal with this very real issue, and we are hopeful it will be bolstered by a request from this committee, but it is technically possible for the House leader to come in and request that the order of business on Monday be amended by unanimous consent. That's correct, is it not?

The Chair: As I understand your question, it is almost identical, at least in intent, to the motion that was put forward this morning, which this committee dealt with and defeated. Therefore, it is not open to further consideration.

Ms Lankin: Mr Chair, if there was unanimous consent to reconsider a motion of that nature, I think it would be in order, would it not?

The Chair: With unanimous consent, the committee could reconsider it.

Ms Lankin: Because you're the Chair, I'm asking you to facilitate my request as a member to understand what are our options as a committee faced with this problem. But it's a little bit, just a touch, like pulling teeth here. Is there anything else that you can tell me in terms of the orders of what options are available to us as a committee if my concerns are shared by other members of the committee?

The Chair: I guess before I could comment on that, I would need to take a five-minute recess and discuss it. I'm not aware of any, but if we agree to a five-minute recess, then I will—

Ms Lankin: I'd appreciate it.

Mrs McLeod: Before we recess, could I just place a question that I believe is supplementary to Ms Lankin's question? That's to ask whether or not it is the government's intention—I assume it's not, but is it the government's intention to bring forward any further amendments before the nth hour that you've just announced to the committee of late this afternoon?

Mrs Johns: What was that question? I missed that.

Interjection: Are there any more amendments?

Mrs McLeod: I'm assuming that there are no amendments.

Mrs Johns: About the issue you're talking about, we may have an amendment.

Mrs McLeod: Will that, however, be the end of any amendments which the government is tabling? Do we have all the government's amendments before us now?

Mr Phillips: I would think so.

The Chair: I have one here. Has this one been circulated, 45(c)(1)?

Mrs McLeod: I posed the question as a supplementary to Ms Lankin's because I'm assuming that if the government is continuing to bring in new amendments, which

we've not had a chance to look at yet, by the end of Thursday afternoon, that the government itself is going to need some time in order to have those considered. Therefore, I think you might wish in a recess to determine how many more amendments we're going to be facing coming from the government itself before the end of the day, and whether or not that might add to the desire of the committee to express its unanimous agreement to request more time for the amendment process.

The Chair: Before the hour of 4 comes and goes, let's take our five-minute recess just so that we still at least have an option.

The committee recessed from 1538 to 1544.

The Chair: It's time to reconvene. Ms Lankin, to answer your question, basically I have to reiterate the answer I did give. As a committee, we have no ability to change the order under which we are operating. However, the committee does have the option, with unanimous consent, to readdress the issue that was considered closed this morning as a result of the defeat of Mrs McLeod's motion. That is the only option open to the committee.

Ms Lankin: Okay. Remind me again, the time limit for filing of amendments is in about 15 minutes, is that correct?

The Chair: The time limit for filing of amendments is 4 o'clock by that particular clock up there. We should understand that amendments that have already been filed can be amended beyond that point, but no new amendments can be filed.

Ms Lankin: Could you explain that to me? We were just chatting about that in the hall and we'd asked someone to come in and ask you that question. If when you're going through a section and you say, "There are no amendments, is there any debate?" if the committee as a group felt there were two words we wanted to change, because there's no amendment we couldn't change that?

The Chair: As I understand it, according to the rules, there can be no new amendments introduced after 4 o'clock this afternoon regardless of what they might deal with.

Ms Lankin: But if we're dealing with an amendment and we as a committee want to change two words in that amendment, we don't have to file a new amendment. We can do that. That seems a little strange.

The Chair: That is the information I have, but we will confirm that.

Ms Lankin: That would be helpful just procedurally. I'm interested in knowing, with the 12 and a half minutes left, what the collective knowledge of the government members is at this point with respect to the number of amendments we might see yet to be filed.

The Chair: I understand there have been some changes filed with the clerk under schedules F and M, which are being copied.

Ms Lankin: So amendments have just been tabled with the clerk to this section we're dealing with, schedule F, and schedule M, with 11 and a half minutes to go, that the members of the opposition have not seen, and we will not have an opportunity to determine whether there are subsequent amendments we would wish to file as a result of that?

The Chair: There appear to be several amendments here, some to schedule F and some to schedule M, that I understand the clerk just received. They are going to be copied now and distributed.

Mr Maves: Mr Chairman, on a point of order: As I understand it, the amendments we have before us even after 4 o'clock can be amended.

The Chair: I've already informed the committee—excuse me. We may stand corrected on that. That was bad information I had. After 4 o'clock there can be no amendments of any description, either new amendments or changes to existing amendments.

Mr Maves: The amendments you've just received, are some of those amendments to—for instance, I believe Mrs Caplan had an amendment they stood down and were looking at. Is that one of them?

The Chair: I'd have to look through them to see. There is a stack here. I haven't had a chance to look through them.

Mrs McLeod: An important question then, Mr Chairman: Are these brand-new amendments we're seeing at five minutes to 4?

The Chair: It would appear as though some of them are. We'll know when we get them distributed. Basically, the rules of the order were that amendments were admissible up until 4 o'clock and beyond that they weren't. When I introduced that whole—

Mr Phillips: Mr Chair?

The Chair: If we're going to debate this particular issue, I'm going to have to ask that we go back, because I interrupted Ms Lankin in the middle of an amendment in order to give this information which has led to this particular discussion.

Mr Phillips: I'm on that particular discussion, if I could, the particular discussion around the amendments being tabled. Obviously, it's quite important for us. We now have five hours of debate left. I gather there have been more amendments tabled just now, and we don't have them yet. Has the government now tabled all its amendments?

Mr Sampson: Mr Chair, there's one more that's being worked on that's the result of a debate we had not too long ago. I don't know what the clerk has officially received, but as far as I know that would effectively be the limit on the government—

The Chair: There is the possibility of one more government amendment?

Mr Sampson: As I understand it, yes.

Mr Phillips: The point I wanted to make, Mr Chair, is the when we set the time lines I think it was the government expectation that there would be minor amendments to the bill at most, and I realize we had the debate this morning. But now, as you know, whatever basis on which we set the amount of time for debate is gone, because I gather there are as many as another 10 amendments that we're getting here at 4 o'clock with five hours of debate time left to deal with the remaining—we've still got 300 amendments and you've added 10 more. The member's shaking his head, but it is a fact. You've got another 10 amendments you are proposing for us in addition to—I think we've now dealt with perhaps 10 or 12 of your 147 amendments.

I think even the government members would accept that the basis on which we began this exercise has changed quite dramatically, even beyond their wildest hope, I guess, but certainly beyond their wildest expectation. You cannot reopen the discussion of this morning; I accept that, Mr Chair. But we will be taking our usual 15-minute break at some time. I hope the government caucus may get together and on their own recognize that it's in your best interest to find a way for some more time for debate. The best case for that is that we just had an interesting debate around freedom of information, and as a result of that debate, the bill will be strengthened; I think we all will agree with that. All of us have spent so much energy on this thing, and if we just gave ourselves the additional time proposed this morning—I don't want to prolong it, other than saying I hope the government members would take the time during the break to have a discussion among themselves and perhaps they may want to revisit that decision we made this morning on more debate time.

The Chair: We'll return to the amendment we were debating when I interrupted. Ms Lankin, you had the floor.

Interjections.

The Chair: Yes, we're still at number 36E, Ms Lankin, and you have the floor.

Mrs McLeod: And there has not been any further proposal from the government about this section?

The Chair: I guess that's up to the government to decide. Ms Lankin had the floor when I interrupted.

Ms Lankin: You have a number of amendments that have been filed with the clerk which are being photocopied. Could you please indicate whether any of them deal with this particular section?

The Chair: Based on what I can see here, there is nothing from the government to indicate a change in this particular area. Is there something coming?

Mrs Johns: Yes, there is.

Mr Phillips: Stop the clock.

Ms Lankin: Yes, stop the clock. It is five minutes to 4. Someone just said, "Let's adjourn for five minutes so we can get this sorted out." We can't.

Mr Clement: Four and a half minutes.

Ms Lankin: There's four and a half minutes left. Five minutes from now it will be past 4 o'clock and nothing else can be tabled.

We have been dealing with this section with respect to some concerns about the privacy of medical records in a circumstance where powers are used by the minister under section 6 of the Public Hospitals Act to close, merge or amalgamate hospitals, in terms of what happens to the medical records. It's set out here that it'll all be done in regulation. We think there should be some protection in legislation. That would be consistent with the kind of concerns that the Information and Privacy Commissioner has raised in the past.

We were told that there's an assumption that there are no concerns with this because they didn't talk about it. We've called the office of the privacy commissioner. A discussion took place with David Goodis of Mr Wright's office, who says about this—surprise—that the subject of this section, as it applies to closures of hospitals, never came up. They haven't discussed it.

We need the cooperation of the government now. Surely you would like to be able to fix this, if we can. We have three and a half minutes left. We can't get an amendment tabled in time to deal with this issue. We've only got reference from Mr Goodis that they haven't had the discussion. We won't be able to check it with the privacy commissioner. Even if it gets tabled, it can't be amended after 4 o'clock. We've got an issue in front of us and we don't know if it deals with the concerns or not.

Mr Chair, I'm going to give this back to Ms Caplan, because it's her amendment. We need the government to cooperate with us and make this recommendation to the House leader to vary the order for Monday to give us just a bit more time to deal with these amendments in a rational way that tries to get the best legislation out of this process, as bizarre and botched as it's been from the beginning; at least try to get amendments dealt with in an orderly way and let us have the debate, because every time we do, we find something new in this act that we didn't know before.

The Chair: This is the now the end of the government amendments?

Mr Clement: Yes.

The Chair: Okay. There is one here that makes reference to the section we're talking about. While we're making copies of them—obviously this is all that's coming forward—

Ms Lankin: Mr Chair, what time is it?

The Chair: It's 4 o'clock.

Ms Lankin: When was that filed?

The Chair: Four o'clock.

Ms Lankin: When was it written?

The Chair: I have no idea. Anyway, we'll take our 15-minute recess so we can get copies of these made and have them distributed.

The committee recessed from 1557 to 1616.

The Chair: Just a very brief announcement: In order to facilitate the motions we've just received, the clerk's office advises me it needs another 15-minute recess. We will recess for another 15 minutes.

The committee recessed from 1616 to 1627.

The Chair: Welcome back. Just a couple of house-keeping things: In addition to the amendments that you have just received, you can remove from your binders pages 47—

Mrs Caplan: Just a second.

The Chair: Maybe if you write these down—47, 51, 52, 66, 259, 261, 287 and 288. Those have either been withdrawn or replaced, so you can remove those from your binder, and you've been passed out the last group of amendments.

When I interrupted Ms Lankin, we were in the process of discussing amendment 36E. Are we prepared to get back to that or is there some other order of business to deal with first?

Mrs Caplan: Since this is my amendment and I had wanted to speak before 4 o'clock, I'm wondering if you'll recognize me, because I understand that the government is moving an amendment to this amendment or in fact actually putting forward an amendment. I'm willing to withdraw this amendment, since they're obviously not going to support it, if I have some assurance

that they are going to table an amendment, or have tabled—and I think it's 36D. So it has been tabled, it's a government motion. It doesn't amend my—

The Chair: Ms Lankin, were you finished when I interrupted you a long time ago?

Ms Lankin: When you interrupted me, I wasn't finished. I would like an opportunity to speak to this issue. If it facilitates the question, if the government intends to move a new amendment with respect to this issue, I would be pleased to hold my comments until that is before us properly and then speak to the issue in the context of that amendment.

1630

The Chair: I want to just ask a question, Mrs Caplan, before I get back to you. The amendment the government is proposing to deal with this particular issue—can somebody tell me what number it is?

Mrs Caplan: It's 36Di.

The Chair: I must make the government aware of the fact that for two reasons this particular amendment is out of order—I think we can deal with it—the first one being that it deals with a section we have already passed, section 11.1, adding a section.

Mrs Caplan: Couldn't we reopen and have unanimous consent?

The Chair: The second one being that it opens up a section of the act, section 14 of the Public Hospitals Act, which has not been referred to previously. For both those reasons, this particular motion is out of order. With unanimous consent of the committee we could overrule both those. I just wanted to make you aware of that before Mrs Caplan makes a decision about what the disposition of her amendment will be.

Mrs Caplan: I will only withdraw my amendment if there's going to be unanimous consent to deal with the government's motion because, frankly, at this point in time, only my motion that is before the committee, which I've heard is unacceptable to the government, will protect in legislation patient health records that are in hospitals that could be closed under the provisions of Bill 26. Unless there's going to be unanimous consent, I'm prepared to debate my motion till the cows come home to make sure that we at least let people know that their records are at risk because there's nothing in this legislation. If there's going to be unanimous consent, I will withdraw our amendment.

The Chair: We can't deal with two amendments at once.

Mr Clement: Why doesn't she stand it down.

The Chair: The disposition of this 36E would be to stand it down?

Mrs Caplan: Let me stand it down until we see the disposition of the government's—

The Chair: All in favour of that? Any problem with that? Okay. Having stood down 36E, we will then deal with 36Di which has been proposed by the government. The first issue we need to deal with are the two reasons why it is out of order. We need unanimous consent on both issues.

Ms Lankin: I have a sense that the government caucus is going to provide unanimous consent for this and the Liberal caucus is. I just wanted to say this is the first

time I've felt like I had any power at all in these proceedings.

The Chair: And I'm sure, Ms Lankin, that you will not abuse that.

Ms Lankin: I agree to unanimous consent.

The Chair: So we have unanimous consent on both—

Mr Cooke: Come on, Frances doesn't speak for me.

Mr Clement: At least not yet any way.

The Chair: Do we have unanimous consent to rule the government motion 36Di in order? Agreed. Mr Clement, do you want to read it into the record, please.

Mr Clement: Should it be the parliamentary assistant?

The Chair: I'm sorry. Mrs Johns.

Mrs Johns: That's okay. It's a long day.

I move that schedule F to the bill be amended by adding the following section:

"11.1 Section 14 of the act is amended by adding the following subsection:

"Transfer of medical records

"(2) Where a direction is made under subsection 6(1), the administrator of the hospital that is the subject of the direction may transfer medical records kept in his or her custody under section 14 to the administrator of another hospital or to such persons or entities as may be prescribed in a manner that will protect the privacy of the records."

The Chair: Is there any discussion on the motion?

Mrs Caplan: I think there a few things that people should know, and that is that from this point forward there will be no opportunity as we examine Bill 26—if we find an error, an inadvertent mistake or in fact a policy that could be fixed or some damage control that could be done, it is now impossible to table any further amendments and changes to this legislation. That's why I'm hoping the House leaders will reconsider that, because if we had one more week to consider this legislation, we could find some serious errors and correct them and then be part of making better law.

The Chair: I don't think that's too relevant to this particular motion.

Mrs Caplan: It is relevant because the motion that's been put forward by the government at one minute to 4 and required unanimous consent of this committee is in fact a serious omission, contrary to what Miss Ecker said on Hansard in this committee and contrary to what Mr Clement said. In fact, I'm going to say "perhaps inadvertently," but he certainly did mislead this committee; both of them did.

Let me tell you something. They wouldn't stand down the section so we could check with the commissioner of privacy's office to ask him the questions to make sure we were making good law. The government refused to allow that to happen. They accused us of in some way trying to raise a concern that wasn't legitimate and said that the commissioner had looked at all of this and he was satisfied and why wouldn't we take his assurance. That's what Miss Ecker said and that's what Mr Clement said.

I spoke to the commission office; I spoke to Sarah Jones. You know what they said? They said that in fact they had not discussed any of this with the ministry. And do you know why not? Because the privacy commissioner and the freedom of information and protection of

personal privacy legislation does not apply to the Public Hospitals Act, it does not apply to any of the information that they have, and therefore, because of the grave concerns they had about the considerations as they affected their jurisdiction, that was where they put their energies in making suggestions to the government.

The fact that I described our amendment as a Band-Aid, as a protection of personal privacy in the unique situation where a hospital is closed and records have to be transferred, was pooh-poohed by both Miss Ecker and Mr Clement as being, you know, I shouldn't be concerned about it. They did exactly what Jim Wilson did when he stood in the House and he said: "Nobody has to worry, because their records are private. Everything is covered by the freedom of information and protection of personal privacy legislation. Well, let me tell you something, Janet, and let me tell you something, Tony: Jim Wilson was wrong and you were both wrong. You misled the committee.

Further, this amendment which required unanimous consent from this committee in order for it to be tabled is a Band-Aid but it is a necessary Band-Aid because without this amendment there is nothing in legislation that protects health records when a hospital is closed and those records are transported to some other health facility, hospital, individual. Without this amendment, people would be very, very worried and they would be very concerned because the privacy commissioner has no authority or responsibility to protect them. That's the reason he reported and his staff has reported. That was the reason they focused on the areas over which they had jurisdiction. I hope that both Miss Ecker and Mr Clement will correct the record and apologize to the people watching these proceedings for misleading them and suggesting that they had nothing to worry about.

I am pleased that the government finally acted at one minute to 4 to address the concerns that we legitimately raise, because you know, Mr Chairman, I've had the feeling as I've sat here at the committee, as I've been here through clause-by-clause and at the hearings, that the attitude of the government members was that in some way we were playing games. Well, let me tell you something. I was elected to this Legislature to make good laws. I am a legislator, I am a lawmaker. I'm not a lawyer. I'm not a lawyer, like Mr Clement. But I'll tell you something, and I said it to him privately: It's my own view that anybody who is a lawyer who actively condones and participates in bad lawmaking should be subject to disbarment by the law society. You would certainly qualify, Mr Clement, because you are participating in bad lawmaking, as evidenced by the way this last amendment has had to be tabled.

1640

Laughter.

Mrs Caplan: Let me tell you something. You may laugh and you may think this is a big joke, but the way that this Bill 26 was put together, the way that it was brought into the House, the fact that we have had 160 government amendments, and the reality that this amendment that is before us was brought at one minute to 4, that it deals with a very serious issue of confidentiality of patient records when hospitals are closed and those

records are being transferred, and the fact that we can no longer pose any amendments to this committee and to the House, that that's over, done and finished, we can't try to improve this bill beyond what's already before the committee, suggests to me that you are not interested in good lawmaking. And that, I have to say, Mr Chairman, makes me very sad.

I've been frustrated sitting at these hearings. We've listened to people. Many of the concerns have not been addressed in the legislation, and I guess I'm resigned to the fact that, unless the government House leader is willing to reconsider and allow some additional time, as we proposed this morning, Bill 26 will go from being a bad bill to being bad law, which will result in bad policy. I regret that, and I think the people of this province will find out about what happens when you have a bad piece of legislation that becomes law.

Ms Lankin: You know, if it wasn't so serious an issue that we're actually dealing with in this amendment, this whole thing would be almost laughable.

Mrs Caplan: Totally incompetent.

Ms Lankin: The spectacle of a government that is supposedly in control of its legislative agenda scrambling the way in which we have seen the government members of this committee scramble, with all due respect, the incompetence of it, has been quite amazing.

I want to say on the record very seriously that over the course of the last couple of days I know in terms of questioning that I've presented a fairly difficult challenge at times to Mrs Johns, and I regret that, but I regret more the fact that the minister has placed her in this position of having to carry a bill she did not have responsibility for the drafting of or decisions with respect to what was going in, and that he has consistently refused to show his face before this committee during clause-by-clause to deal with these serious matters. I think there is a real travesty in that, and on the record I give both my condolences and apologies to Ms Johns for how things have unfolded over the last few days. To me, the blame is squarely laid at the feet of Jim Wilson.

The process of watching the government, asking the question, "What amendments are coming?"—I asked yesterday afternoon. Didn't know. I asked this morning what they were dealing with. It was up in the air in terms of what the topics were, how many there were. None of the government committee members know.

I mean, I'd like to know who's making the decisions. At one point in time, when the first set of amendments was tabled during the last couple of days of our travel on the road, I thought the minister was the person in control and making the decisions, and I couldn't believe some of the mistakes that I saw, and the one in particular that I drew to the committee's attention, which has resulted in a further amendment that just got tabled today. But I found out in fact that the minister was off on holidays and not dealing with it at all. So I don't know who's taking care of the shop here.

Mr Cooke: David Lindsay? I don't know.

Ms Lankin: He's back. Maybe he's the one who's saying, "No, we won't deal with your concerns around the issues of supervisor's powers and the sunseting of that." Maybe it was him who made that call, because I

know a whole lot of the committee members appeared, at least, to be quite sympathetic to the point—the good point—I was making.

But we've got people scrambling to get another 10 or so amendments filed, and they were filed with the clerk at 10 minutes to 4, 10 minutes before the deadline when no more amendments could be filed, and not one of those amendments was shared with any of us in the opposition. There was no opportunity for us to provide you with any comment or a concern or constructive criticism. It's there, and you know what? Now that it's past 4 o'clock, if there's a problem with any one of those, we don't have a way, as a committee, to deal with it. We can't amend the amendments. The Chair has ruled and told us that what you see is what you get; that's all that's left now.

I sure hope you got every word right. There's a great possibility that you didn't, because the amendment, unlike Ms Caplan said, one minute to 4, it was actually—I checked with the Chair; I got the timing—it was 4 o'clock right on the dot that it was filed, and lo and behold, it was an amendment to a section of the act that (1) we had already passed and (2) had never been opened by Bill 26. Under the rules of order, you can't move an amendment to a section you didn't open under the bill, because this is only amendments to the bill. Amazing.

I understand how that happened, because really hardworking, well-intentioned people were scrambling trying to meet the concerns that have been raised and working with leg counsel and in the five minutes before 4 o'clock were trying to produce it. So I understand how that happened. But the fault for that rests with the government, the political leadership of the government in terms of the management of this bill. From beginning to end, it has been a shambles. And, as I said, if it wasn't so serious in terms of the issues we're dealing with, it would be almost laughable.

The content of this particular amendment: You were attempting to address what I think were legitimate concerns that were being raised by the opposition members, and I think you thought they were legitimate too, because you did attempt to do this and to get an amendment before us, and that I appreciate. The concerns were raised about a provision in the Public Hospitals Act which had not been reviewed during the discussions between the ministry and the privacy commissioner, and the reason it hadn't been reviewed is because the Public Hospitals Act does not come under the purview of the privacy commissioner.

You might shrug it off and say, "Well, then, so what's your problem?" Well, the problem was that the government was introducing a new power unto themselves to disclose information in medical records that's currently under the ownership and control of hospitals. The act sets out that medical records in hospitals are owned by the hospital and under the control of the CEO of the hospital. If you'd left well enough alone, that would have remained in that case, but we know that you've given yourself—the minister—the unilateral power to direct the closure, amalgamation or merger of hospitals, and so where you close a hospital, something has to happen to those records, and so you write yourself, instead of in the legislation originally, the ability by regulation to set out

terms on a whole range of things that happen with that set of medical documents, including the disclosure.

Interestingly enough, under the sections of the bill that come under the purview of the privacy commissioner—and just for everyone's edification, that's where the ministry, the government itself, holds the information, like under the Health Insurance Act, and that's where the majority of the concerns have been raised—there the privacy commissioner very clearly told you his concerns about what you were doing around disclosure.

You went some way to address those concerns. You tightened it up a little bit, talked about names and that sort of stuff, but said you could still disclose it. In legislation you say "for the purposes of the act," so that's one tightening up which isn't here in this act, and secondly, "for other reasons as prescribed," but you've agreed that you will consult with the privacy commissioner and show him a draft of those regulations first and respond to his concerns. That's a commitment, an undertaking that has been given with respect to those sections.

So here we are wondering how this didn't get dealt with. Well, I spoke directly to Mr Goodis at the commission. He said that he'd never seen that section. I read it out to him during the 15-minute break. I read it to him, and he agreed he'd never seen it, and he agreed that there would be potential issues around disclosure if that was an act that was under the privacy commissioner but they're not dealing with it because it's not their act. They have to have concerns about the Ministry of Health Act.

1650

However, I would like to put to you that with the amendment you put forward here today, while it is a small step forward because it makes reference to the CEO of the hospital, when transferring records under any of the directions given under section 6 by the minister, having to do it in a way, in a manner that will protect privacy of the records, you are still keeping the ability to write the regulations that will direct that hospital CEO with respect to matters such as disclosure and what that means in terms of the manner in which that person will protect the privacy of records.

On one hand, you've given an obligation, you've placed an obligation on the CEO of the hospital—for which we're glad and that's good—but you've also given yourself—the minister—the ability to write a regulation which could run counter to that. Then the CEO's in a really difficult position, because what do they do? In many other places you've made it very clear that the directions of the minister, particularly when they relate to powers being exercised under section 6, must be followed by the CEO.

I'm going to take it on good faith that you're not going to write a regulation that would direct the CEO to do something that would be contrary to a section of the act in which he or she has been given the obligation to do so in a manner that will protect the privacy of records. But you know, I want something more than good faith here, and unfortunately, because we're past 4 o'clock and we can't amend this amendment and we can't deal with the real issue, the only thing we can do is get you to make a commitment on the record.

I would like you to commit that the regulations that you develop under this section, you will provide to the privacy commissioner, even though he has no jurisdiction over this act, in the same way that you are going to do that for the regulations that you are developing under the Health Insurance Act and other areas where he does have control, that you will provide that to him for comment and that you will listen to his comments with respect to that.

Because the bottom line here is that if you're a member of the public—if you're you, if you're me—you don't care whether the medical record is in the hands of the general manager of OHIP or the CEO of a hospital. You want to know that your medical information is held private and that there are rules that guard against the disclosure of that in a way that is going to jeopardize you and your privacy, and you want to know that someone cares enough to make sure that the rules are right.

Again, with all due respect, the way in which we've seen the scrambling going on, the way in which we've seen the last-minute, last-ditch efforts to deal with this, and always, always preceded by proclamations that there is no problem, I think that the public can only have confidence if in fact it is the privacy commissioner who reviews that and who says he is comfortable with what is set out in regulations.

I will support this amendment because it is better than nothing, but boy, I'll tell you, what a shame that this is the way we had to get to it, at 4 o'clock, on the deadline when amendments could be filed.

I will support it, but I want a commitment here on the record today, something that you are prepared to bind the minister with a commitment that he will share the regulations, in a draft form, under this section with the privacy commissioner and will listen to that input and build any concerns the privacy commissioner has into the regulations that you then take forward to cabinet and publish under this section of the act. That is the least you can do, given the way you have botched the handling of this all the way through.

I guess the last point I will make on this is that at least you listened about a legitimate concern that was raised under this section, and I suspect because it's an area that's got a lot of public attention. If it had been determined that when you sort of railroaded it through, as it appeared you were going to do at one point in time until the argument switched here, there would have been a public outcry, so you scrambled to fix this one—unfortunately you didn't scramble to fix the very legitimate issue I raised around the supervisor's powers and sunset of that, but it's past and done.

What I want to know is, what are you going to do later today or tomorrow, when you say, "Oh, there's no problem with that," and I walk you through the act once again and point out to you things that you didn't know and that you didn't see, which obviously happened with this, and you come to an understanding that I actually have a reasonable point and we can't table any more amendments and we can't amend the amendments that are before us? What am I going to get, a commitment that when the Legislature comes back in March you'll open up the act again to fix that?

Maybe we should get an agreement that if you continue this process and you ram it through and pass it on Monday, we get a committee to review and debate all the rest of the amendments anyway, because it would be instructive for us all and because we'll probably find a whole bunch more mistakes. Then we could have a mini-omnibus bill to correct the omnibus bill or to amend the amendments to the omnibus bill in March. What do you think about that? Is that something that you could agree to?

Maybe what we need is over the course of the next number of hours for the government members to think very carefully and to consult with who they will have to consult with about the very real issue here in terms of passage of good law. There's not one of you who can defend at this point in time that you know the rest of these 300 amendments either should be rejected, if they are opposition amendments, or passed, if they're government amendments, and that there are no more mistakes. You can't. There's not one of you who can do that, and you know that. So maybe what you need to do is do a bit of soul-searching, a bit of discussion with other caucus colleagues, and sit down with your ministers and with the government House leader and say: "We actually agree with the opposition. We need another week in clause-by-clause to go through and to understand and to deal with and to be able to amend amendments or table further amendments where we find sections of the act that are severely flawed."

I'm not going to move a motion right now, because if I did, you'd all have to vote against it. I know that. But I am pleading with you to go away and to think about this and to try and bring some sense to this process so that we don't have to spend the next number of months after you pass this bill stumbling over unanticipated consequences because we didn't have the time to debate and to understand fully the amendments that you've put forward and/or any errors contained in those amendments or we didn't have the time to debate the legitimate points of concern that the opposition were trying to raise then or the public's been trying to raise.

I leave you with that thought. I will support this amendment. I thank Mrs Johns and the ministry staff and leg counsel, who worked and scrambled to get this tabled before us at 4 o'clock, and I ask you to think about the points I have made very seriously and not to take them lightly and not simply to respond in the way we have seen all the way through this, which is to say no to any reasonable suggestion around process that the opposition has made. I hope it's a question that we can visit together either later today, or probably it would be more constructive to be first thing tomorrow morning, so you would have time to do the appropriate consultations so that your answer that you come back to us with we know will carry the full weight of your ministers, your cabinet, your government House leader and your Premier.

Mr Phillips: I too will support the government motion. I think the public should be aware that what we're dealing with right now is the whole process for closing hospitals. The government's indicated that there's a need for some substantial restructuring, and most people would agree. So here we have a bill that had the process for

hospital closings in it, and we in the opposition said, "Surely there should be some protection for people's personal information when a hospital closes." Up until 15 minutes to 4 today, we were told by the government members: "No, there's no need for this. It's all handled." Then the rug was completely pulled out from the government members when, lo and behold, they were wrong again. The privacy commissioner says: "Whoa. This is extremely important. When you get the plywood on the windows of the hospitals, the Teperman hoardings going up, we don't want the records blowing around the back parking lot. They have to be protected somehow." But lo and behold, that wasn't part of the act.

1700

The public have to be absolutely scratching their heads out there: "Wait a minute." The privacy commissioner, for four weeks, has been blowing the whistle, saying, "What could be more important than people's privacy records?" and when you're closing the shop, turning the lights out, putting the hoardings around for Teperman to move in, there's no protection for people's personal records; out in the back parking lot, as Laidlaw pulls up to pick them up, blowing around are people's personal records.

It took the two opposition parties 15 to 20 minutes to pull this out. The government still said it wasn't a problem. Both my colleague Ms Caplan and Ms Lankin went out and got on the phone, on their own, and it is a problem.

Mr Cooke: They wouldn't get on the phone; they wouldn't even adjourn.

Mr Phillips: My colleague says they wouldn't adjourn to deal with it. We now, fortunately, have a provision in here to protect what all of us agree is an absolutely fundamental personal privacy, and that's your medical records.

But my point is this: It was absolutely under the wire. The stopwatch was on, the staff was writing the motion, someone was furiously typing it, and they ran up here and got it on your desk at 4 o'clock, just before amendments closed. This is no way to run a province. There are people at home watching, and there should be a warning on that TV screen to sensible people: "There are scenes of gross incompetence by the government members. You may not want to watch this consistently, because it's very upsetting."

Seriously, here we are dealing with something absolutely fundamental. I guarantee you Ernie Eves is looking at, "How do I cut the legislative channel out so we don't subject ourselves to any more of this embarrassment?" I'm afraid this may be one of the last shows you'll see; he won't want this going on much longer. I honestly do not blame the members across. They've done a marvelous job on behalf of the government of defending the indefensible and they've demonstrated some terrific talents. There's some other talent there that Mr Clement should let at it a bit, but you've done a great job of trying to defend the indefensible. It has turned into a comedy.

It was only through simultaneous phone calls to the privacy commissioner that we got the latest one out, and now we've got an important amendment so some people

can say, "Thank heavens." But here we are, we're at number 36 of 327, and there are 10 more we just got. So I despair of what the public must be thinking of the government. We will continue to try and find improvements to the bill. We'll support this one and move on to the next one and see if we can't, as fast as we can, in the remaining—I think we've now got three hours left to fix the bill. We'll be supporting this.

It really is an embarrassment to them, but it's not them you should be blaming; it's whoever is in their big offices. Thank God there wasn't a traffic jam out there, or we wouldn't have gotten some of these amendments today, because literally they came in at two minutes or three minutes to 4. We'll support this amendment and hope we can get on to find some more opportunities for improvement.

Mrs Johns: Privacy is always an issue that is very important and has been very important with this government. Mrs—Ms Lankin asked me if we would consult with the privacy commission's office prior to enacting regulations.

Ms Lankin: On a point of order, Mr Chair: I give Mrs Johns absolute permission to call me Frances. It would be a lot easier for her, or I could from time to time go like this and back to the Chair.

Mrs Johns: It's even worse than my usual mistake. I was going to call you Mrs Caplan this time. Sorry.

Mrs Caplan: Now, let's not get carried away. That's the Chairman's prerogative.

Mrs Johns: The ministry always consults with the privacy commission office prior to enacting regulations. We will certainly be doing that this time. Personal records are very important to us. It was never our intention to have the personal records of the people of Ontario strewn around parking lots, as you've suggested. Thank you very much for helping us to put this through in the last few minutes of the process.

The Chair: All those in favour of this amendment?

Ayes

Caplan, Clement, Cooke, Ecker, Hardeman, Johns, Lankin, Maves, Phillips, Sampson, Tascona, Young.

The Chair: I declare the amendment carried.

Mrs Caplan, we need a decision on your—

Mrs Caplan: I will now withdraw that amendment.

The Chair: Okay, Mrs Caplan withdraws her amendment to section 12.1. We've already carried section 12. We now move on to section 13.

Mr Maves: Since we opened up section 11, do we have to—

The Chair: No, we opened up section 11.1.

Mr Maves: Do we have to pass section 11 again?

The Chair: No. It's a separate section.

Mr Phillips: Battling Chairs, eh?

The Chair: Professional jealousy. We don't get much opportunity.

Mr Maves: Just trying to help.

The Chair: We now move on to section 13. The first amendment we will deal with is a government amendment.

Mrs Johns: We would like to stand this down until the next motion is looked at, please.

The Chair: Unanimous consent to stand it down? Okay, the next amendment is a Liberal amendment.

Mrs Caplan: I move that clause 32(1)(u)—no. We have a replacement amendment, I believe, 37A, because the government has stood down its amendment—

Mr Phillips: They like ours.

Mrs Caplan: All right, we're ready.

I move that subsection 13(1) of schedule F to the bill be struck out and the following substituted:

"13(1) Clause 32(1)(d) of the act is amended by adding 'and providing for filing of bylaws with the ministry' at the end."

Ms Lankin: I'm obviously not privy to all the discussions that have been going on here between various parties. I'm interested in knowing why the government stood its motion down in favour of Mrs Caplan's motion, and I'm interested in knowing what the difference between the two motions is. For those people who don't have them in front of them, they might be interested to know that one reads, "Clause 32(1)(d) of the act is amended by adding at the end 'and providing for the filing of bylaws with the ministry'"; and the other one reads, "Clause 32(1)(d) of the act is amended by adding 'and providing for filing of bylaws with the ministry' at the end." Maybe someone, in the wisdom of legislative drafting, could tell me what the difference is and why the government has stood its down.

1710

The Chair: Would you like to tackle that one?

Mrs Johns: Because great minds are thinking alike?

The Chair: Ms Lankin, does that answer your question?

Ms Lankin: If it were believable. I don't know why I always have a problem with Ms Johns's answers. It's consistent enough.

If I'm being unfair, someone could correct me, but I think the two amendments are identical—except for the words being in a different place, but it's the same thing—and that Ms Johns has stood hers down so that at the end of the process she can say they supported a Liberal amendment. I don't know why the Liberals would let her get away with that, quite frankly. If I'm wrong, maybe someone could tell me.

The Chair: It might have been in response to a request Mr Phillips made. I don't know.

Mrs Caplan: I think that's exactly what happened. We identified and responded to a concern that had been raised primarily by the hospital association and the hospitals which allowed the minister to prescribe bylaws to be passed by the hospitals. We presented this amendment, and the government had drafted one very similar to our own. They were quite happy with ours and decided they'd like to find one amendment of ours that they could accept. I suspect this is it.

If they think we're going to be satisfied that they have found one amendment they are prepared to support, without any further ado I will just accept that and tell them it is unacceptable to us. If they think that fixes this bill, it does not.

But this is a serious amendment. The Ontario Hospital Association and the hospitals were very concerned that the minister could impose by writing hospital bylaws. This does respond to that one concern, although there are many concerns left outstanding. The fact that they haven't accepted all our amendments leaves the bill badly flawed.

The Chair: Shall the Liberal amendment 37A carry? Carried. Do we need a recorded vote? I guess we don't need a recorded vote. Ms Johns, you will withdraw 37?

Mrs Johns: I withdraw it.

The Chair: The next amendment we will consider is an NDP amendment, page 38.

Ms Lankin: I move that clause 32(1)(s) of the Public Hospitals Act, as set out in subsection 13(3) of schedule F to the bill, be struck out and the following substituted:

"(s) prescribing the classes of grants by way of provincial aid and the methods of determining the amounts of grants, providing for the manner and times of payment and the suspension and withholding of grants and for the making of deductions from grants and providing for loans to hospitals."

Let me remind you that when we dealt with section 3 of schedule F, we had a concern about the way the act repealed the definition of "provincial aid" for the purposes of the Public Hospitals Act. We also had a concern over the way in which funding decisions could be unilaterally made by the Minister of Health without reference to regulation etc. The regulation-making section under this act is very vaguely worded in terms of what would be set out. We were also concerned because section 6 gave the minister the discretion over hospital funding on a case-by-case basis, and he could make any decision he wanted in the public interest.

When we put that all together, we felt there needed to be something similar to the old act, and this is the regulation-making section out of the old act which talks about "classes of grants by way of provincial aid," because it gives some sense of fairness and equity across the system and some ability that people will work through and/or negotiate what the different classes of grants are. It allows for a myriad of them; it doesn't hold people in any way to a universal, across-the-board circumstance.

We certainly have major concerns with all the ways the powers have been changed and all the ways it's been given unto one person and not even a reference to cabinet, let alone Legislature, let alone public bodies etc.

However, having said all that, let me tell you, it's so clear to me, given what we've been through, that there's no way I could get the government to support this. So it's been read into the record. That's fine by me. I'll withdraw it at this point.

The Chair: Thank you, Ms Lankin. The next amendment we will deal with is a government amendment, page 38A.

Mrs Johns: I move that subsection 13(3) of schedule F to the bill be amended by adding the following clause to subsection 32(1) of the Public Hospitals Act:

"(t.1) prescribing such persons or entities to whom medical records may be transferred under subsection 14(2)."

These were regulations brought forward as a result of the most recent discussions on medical records, and we have brought those forward as a result of the discussions we had with both parties recently about medical records.

Ms Lankin: Could I have a moment, Mr Chair? I haven't had a chance to see this. This is one of the last group that was filed.

Mrs Caplan: If I could, while Frances is looking at it, let me just make sure I've got this clear. The intent of this is to fix a section of the Public Hospitals Act that does not contemplate what happens to the records when a hospital's closed. This allows for the designation of individuals or entities, and an entity could be a company or a corporation. "Entity," in law, is broad—flexible, to use your word, Ms Johns—so the government can assign responsibility and then hold and be accountable for those records. Is that the intent of this amendment?

Mrs Johns: Yes.

Mrs Caplan: It's a necessary amendment and it is companion to the issue we raised just recently. I think it's worthy of support.

Ms Lankin: I understand the intent of it, that this is the regulation-making power under the subsection 14(2) that we just passed. Is that correct? Could someone help me technically on the numbering? We have section 32(1), which is the regulation-making section, and we have sub (t), and under (t) we have subsections (i) through (iv). This appears to be (t.1). Is there a reason why it's not (t)(v), for example?

Ms McKeogh: The wording of clause (t), just the opening wording in that sentence, didn't lend itself to this.

Ms Lankin: So this follows (t)(i) through (iv), and it's the next section, a stand-alone? Okay. Thank you.

The Chair: All those in favour of the amendment on page 38A? Carried unanimously.

The next amendment we will deal with is a government motion on page 39.

Mrs Johns: I move that clauses 32(1)(u) and (u.1) of the Public Hospitals Act, as set out in subsection 13(3) of schedule F to the bill, be struck out.

In clause (u) in Bill 26, the board could revoke appointments and where doctors' rights to hearings and appeals may be limited or eliminated, so we are deleting that clause. We are also deleting clause (u.1), which provides protection from liability for corporations that own or operate hospitals where boards exercise power to revoke appointments.

In the following two amendments, both the Liberals and the NDP have suggested that these two clauses be struck out.

The Chair: Any further discussion on the motion? Ms Lankin.

1720

Ms Lankin: I'm sorry. Could you tell me again what clauses (u) and (u.1) do?

Mrs Johns: Clauses (u) and (u.1) provide that regulations may be enacted to permit a board to exercise the powers in subsection 44(1) under other prescribed conditions without hearings, appeals or liabilities for damages.

Ms Lankin: That's clause (u), right?

Mrs Johns: No, that's (u) and (u.1).

Ms Lankin: That's a little different than what you just explained to us a minute ago—very different.

Mrs Johns: Two different ways of writings them down. I wrote it down both ways. We didn't like the other one.

Ms Lankin: The other one had nothing to do with this. It's got nothing to do with the liability of a hospital. This has to do with the regulations under which you can revoke physicians' privileges and/or they can appeal it or not appeal it. Right? I just want to make sure we're dealing with the right section, because your first explanation was very different.

Mrs Johns: Clause (u.1) also deals with damages protection.

The Chair: Mrs Caplan.

Mrs Caplan: I have a question of the parliamentary assistant. We have real concerns about this. I'd like to know what was the minister's rationale for including this in the bill in the first place, given the fact that this would have passed, and it was the intention to pass this, before Christmas without public hearing. This strips doctors of all their rights of appeal, of all rights of due process should a hospital be named for closing. In fact, by leaving in clause (v), and that's why we have the following amendment, you still say that you can change the appeal process and set up alternate appeal mechanisms.

I must admit I couldn't understand why it was there in the first place and I'd like to have a better understanding of those sections even though you've taken them out.

Mrs Johns: I'm going to refer to the ministry.

Mr Finkle: Subsection 44(1), which it refers to in clause (u), removes the ability to appeal change, alteration of privileges or appointments for physicians where a hospital closes, where it ceases to operate, and there might be other circumstances where other aspects of restructuring, like the movement of privileges between facilities—

Mrs Caplan: It was the "other circumstances" that I think everybody was quite hysterical about.

Mr Finkle: That's right, and they're undefined. We've clarified subsection 44(1) to be "cease to operate," which is very clear.

Ms Lankin: "Cease to provide services."

Mr Finkle: "Cease to provide services." Now those are the only two conditions where appeal to the Hospital Appeal Board would be restricted.

Mrs Caplan: So the question that I have is, Peter, what do you envision happening? There's no protection here for any doctor who has privileges or a staff position in a hospital that's slated for closing, or process set out for how you're going to move those services to another hospital, assurance that that doctor will have the opportunity for those privileges.

I certainly can understand their concerns, because these are their lives. They've spent their whole life working in a hospital. They're good, they provide good service, there have never been concerns, and all of a sudden that hospital's slated for closure and they have no assurance of where they're going to be able to practise because they rely on a hospital because they need that facility to be able to deliver services. This legislation provides no

mechanisms or assurance for that transition, so I thought this would be a really good time to ask you to explain how you contemplate that happening.

Mr Finkle: The only experience in terms of a labour adjustment plan for physicians, let's say, in a hospital restructuring context is the Metro plan, in which in all instances there are more services being provided at the end of restructuring—at least the same amount, and in Metro's case it calls for the caseload to actually increase. The need for physicians is at least the same, but it's in different locales, different locations, so that there'll be movement of physicians between facilities.

Appointments to other facilities are still appealable to the Hospital Appeal Board in all instances. If you are denied an appointment for some reason, it's still appealable. That's my understanding. But in circumstances where a hospital is closing or when it's ceasing to provide an entire service, then it's denied the appeal.

Mrs Caplan: So people should be concerned about how this is going to happen, and the ministry has not only not contemplated it in legislation, but as yet has no mechanism contemplated that would ensure fairness in that process.

Mr Finkle: In clause (v) there's an ability to pass regulations which would deal with other circumstances, other procedural protections. We would like some time to consult with various groups, including Ontario hospitals. Metro outlines a process where you would have some discussion by the sector in its entirety.

Mrs Caplan: That's exactly what I was waiting to hear, because consistently through all of these proceedings we have heard Mrs Johns talk about the speed with which you're going to move. Now we're at the heart of what the problem is, that the consultations have not occurred—we know that there wasn't consultation on the bill—but there are a lot of very significant issues affecting people's lives and affecting patient care that haven't yet been contemplated.

One of the reasons, Mrs Johns, that we are so concerned about the speed with which you are planning to move, the lack of accountability, the lack of due process and the lack of natural justice is because you haven't had the time to develop the mechanisms in consultation with anyone. So when we get phone calls from our constituents who are worried about how they are going to get the service, what's going to happen to their doctor, we have to say to them: "We don't know. The ministry hasn't even consulted anybody about that yet, and yet they're telling us that this restructuring commission, they want to have it in place, we were told, January 1." That's why you had to have this bill before Christmas.

I'm not being hard to get along with. These are serious public policy concerns. When do you expect that you're going to be able to tell people what you're going to do? They don't think you know what you're doing. You're looking very incompetent.

Mrs Johns: I think people recognize that the implementation part of the hospital restructuring is a new process that we're going through here. This regulation allows us the flexibility to be able to say, "Yes, we can handle this and we can move forward."

We have consulted, so far, with the district health councils. They've looked at this as they've talked about their local initiatives and how they're going to both deploy manpower and their hospitals. So we have looked at it but we have further consultation to go on it. We admit that.

Mrs McLeod: Mr Chairman, it just occurred to me that if anybody was actually trying to follow what we're doing here and understand what the answer was to the public concern that was expressed repeatedly, in this case by physicians who saw their right to appeal being denied by this legislation and who have done a considerable amount of work to analyse the bill that was presented and discovered that their right to appeal had been affected, if they wanted to know whether or not they should feel okay, it would be very difficult to know from an amendment that comes in and says "clauses 32(1)(u) and (u.1) of the Public Hospitals Act, as set out in subsection 13(3) of schedule F to the bill, be struck out," even if they had Bill 26 in front of them and they could go to page 53 and look at (u) and see that it says:

"(u) providing that a board may exercise the powers set out in subsection 44(1) under conditions other than ceasing to operate as a public hospital and providing that in that case any or all provisions in subsections 37(3) to (7) and sections 38 to 43 will not apply and, for the purpose, prescribing those conditions;

"(u.1) "providing that subsection 44(4) applies with necessary modifications with respect to a regulation" etc.

That's the part that's been repealed. I have no idea what that says to the basic question of, does a physician have the right to appeal his dismissal in the event of a hospital closure, and furthermore, how is that limited by the entire clause (v) that follows, which is not addressed by the amendment, which seems to still set out complete power to determine under what conditions a physician will have the right to appeal? So the bottom question is, what's your answer to all the people who came in and said, "We feel you are taking away our legitimate right to appeal"?

1730

Mrs Johns: We don't believe that is so and I'll refer that to Mrs McKeogh.

Mrs McLeod: That was a question asked during the hearings. I'm just saying, how does this bill, as amended by your proposal, address that question?

People said to you: "We're worried about our right to appeal being withdrawn. This bill takes away our right to appeal, a basic right that we have." You've brought in an amendment that says, "We hear you and we're addressing it," at least we think it does, but none of us have any idea, from what I just read, of whether you've addressed it or not.

So I'm asking you a straight-out question. Those people came in and said, "We've got a concern." You've said, "We're addressing your concern." How have you addressed their concern?

Mrs Johns: When a hospital closes or ceases to offer a service, then there is no right of appeal. But as we have heard from the ministry people, especially with the only plan that we have available at this particular point, the Metropolitan Toronto District Health Council report, there

will be more demand for doctors but it will be in different areas.

Mrs McLeod: May I ask, because I don't know what (v) means now—I simply don't have all the other acts in front of me that I need—so when (v) applies, is that where a hospital has not ceased to function, therefore there's no closure? You can still limit the right to appeal on dismissal?

Mrs Johns: I'm going to refer to legal counsel.

Ms McKeogh: The way the act works with this amendment is as follows. In the body of the act, section 44, the rights to hearings and appeals are limited in two situations: when a hospital's closing or ceasing to provide a service.

Clause 32(1)(v) says that where rights of appeals and hearings have been limited or do not apply, there is a power to enact regulations prescribing alternate or additional processes.

So the limitations have occurred in two circumstances: closures and ceasing to provide a service. That's in the act, section 44. There is in (v) a regulation-making power to prescribe alternate procedures.

Mrs McLeod: So, "You have no right to appeal, but we may give you a right to appeal in the future"?

Ms McKeogh: In the regulation-making power, yes.

Mrs McLeod: Thank you.

The Chair: Ms Lankin.

Ms Lankin: I think, just to try to put this in plain language because we were given an explanation earlier that was incorrect with respect to what this does, and a little bit of history on this—when Bill 26 came in, it said where the minister directs that a hospital's going to close, "Where we're going to close a hospital," then privileges are revoked and the doctor's got no right of appeal.

It also said, "In any other circumstance that we determine"—anything—"we can also take away the right to appeal." Well, some of us howled. A lot of doctors who came forward certainly howled about that situation, and we heard about what this means in terms of doctors who are patient advocates within the hospital system, for example, nephrologists.

I remember a very compelling presentation—maybe there's someone over there who doesn't agree with me on this, but I thought the nephrologists' presentation was very compelling. They indicated that their dialysis department, which is a disease-driven service and the numbers are increasing and therefore the demand is increasing at a time when the hospital budget was shrinking—they were in a position that they were becoming quite a thorn in the side of the hospital CEO by arguing for more money out of a shrinking pie, and that in fact there are lots of times where doctors have strained relationships with their CEOs as they are advocating around patient care or around departmental issues.

They felt that if there is a blanket ability for a circumstance to be set out where a CEO can just revoke the privileges and there is no appeal, in addition to the situation of closures, it would have an incredible, chilling effect on the role of doctors as patient advocates within the hospital setting.

So, over the course of back and forth and trying to get amendments to this, there was an amendment brought in

which tightened up that "in any other circumstance" and specified, because we said, "Well, when are you going to use those powers?" and what we found was that in addition to closure, the "other circumstance" is where a hospital "is directed to or decides to cease to provide a service." In those two situations you don't have any appeal if you're a doctor unless the minister decides in regulations that he wants to give you the right to appeal. We don't know when the minister will decide to do that or why the minister would or wouldn't or whatever. That's a situation we're left with today.

I guess the concern I have that I'd ask the parliamentary assistant is in a circumstance where the hospital is directed to cease to provide a service or decides—let's say is directed. In fact, in a number of the situations where there are going to be mergers or amalgamations of services, a rationalization of services, even if the hospital corporation and physical plants remain separate—there are lots of studies looking at rationalization of services where all of neonatal care may be moved into one hospital and that sort of thing—where that happens, presumably one hospital may be directed to cease to provide the service as part of the restructuring that you're doing, the rationalization of services.

The question that the doctors still have is, why would you have a situation where their hospital privileges are just completely revoked and there isn't a process or a guarantee that they can actually follow their patients with a service to the new hospital? Why do they get put in a position of complete insecurity with respect to their hospital privileges where the service has gone to, in the ability to follow their patient?

Again, let's say it's been one of these doctors who has been a little bit outspoken and, I don't know, has a bad reputation in town or something—not for patient care, not for quality of patient care but for standing up to hospital administration—and you move it over. If you don't give any rights to appeal under your regulation-making section, because we don't know what you're going to do there or on what grounds, what happens to that doctor? That doctor may have the CEO at the new hospital deny privileges in relationship to this. I'm really lost as to how you're going to reassure that doctor and the patients of that doctor in that circumstance with the amendments that we have here. I feel like there's one more amendment we need to fix this, and there's the missing link.

Mrs Johns: I'm going to explain part of it. Basically what I'm going to say is that when a hospital closes down or is directed to move its service somewhere else, there is really no reason why we would keep the doctor with his privileges at that hospital, obviously, because the service is no longer going to be provided there. So your question to me then becomes, why didn't we move his privileges to another hospital?

Ms Lankin: Why have you cut the doctor off without knowing that his privileges are going to be removed and without some surety of due process, should he be denied an application for privileges where the service went?

Mrs Johns: He can apply at the other hospital for privileges and he can appeal that decision if he's unhappy with that decision.

Ms Lankin: Under what grounds?

Ms McKeogh: It would be the normal appeal process in the Public Hospitals Act, whereby any physician is entitled to apply for an appointment and can request a hearing before the board, a hospital appeal board and so forth, Divisional Court. It just falls back into the normal course of the act.

Ms Lankin: So there's no guarantee that the doctor will be able to follow his patients with that service when you rationalize the service. That's the piece that I'm saying is missing from this act. There's no guarantee. So there is an insecurity left for those doctors in those circumstances. Is that something that, if you had a chance, you would be willing to try and work to fix in the legislation? It was a fairly strongly made point by the physicians coming forward.

Mrs Johns: I don't think so. I believe what we believe is happening, especially in the Metropolitan Toronto District Health Council, is that there are lots of opportunities for doctors to obtain positions and that there will be other opportunities. If all their patients are going to another hospital, there's obviously a need for the doctor to be at that other hospital and so they will receive an appointment. There's just not going to be an influx of patients and they're going to be able to handle the same number of doctors. I mean, that will not be what happens. 1740

Ms Lankin: But you see, what you haven't done is dealt with some of the circumstances and concerns that doctors are feeling themselves with respect to their ability to continue on practice of medicine. Let's say in this case the doctor's a specialist, if that specialist doesn't get hospital privileges, what happens to their ability to practise in the province of Ontario?

Mrs Johns: They can obtain positions with either hospitals or a health facility. From that standpoint, we know there are positions throughout Ontario for specialists in different areas.

Ms Lankin: I think you're suggesting that in this circumstance there is no guarantee for that specialist that they would move with the service with their patients to a hospital, and without a hospital appointment—I think I'm right, if I remember now, further into the act that we haven't got to in terms of amending it; I think it's under the Health Insurance Act but I'm not sure where it is—but they require that relationship in order to maintain a billing number.

Mrs Johns: The ministry wants to comment on that.

Mr Finkle: Yes. I think that this deals entirely with another section of the act, this linkage of privileges, specialists' positions in hospitals.

Ms Lankin: And billing numbers.

Mr Finkle: And billing numbers. One of the things that's clear about most restructuring exercises, or the principle that you speak to, the movement of physicians with patients and keeping programs intact for quality reasons is a very strong principle in good restructuring exercises. Windsor and Metro are two prominent ones where the physicians as a group have gotten together and worked this out, and we're going to have to rely on some of that goodwill and development of agreements between physicians and hospitals to facilitate this.

Ms Lankin: Okay. Again I just want to point out some what I see as real problems in how this act has been put together and developed. We had a discussion some time in the last couple of days about the issue of tying terms and conditions to funding, and there we were told that one of the things that we wanted to be able to do was to insist that a hospital had an operational plan in place and that was the term and condition that we were going to tie to it. I argued there were a lot of other sections that you had the power, but what I was told then was, "We do this now, but it's by policy and under goodwill and we want to have the power to insist."

A few amendments ago I suggested an amendment which talked about, in the cases of hospital closures, mergers and amalgamations, the need to have a workforce adjustment plan for all the health care workers, including the physicians, so that you had the power in the legislation to insist that that happen and that people be dealt with fairly and that these things be worked out, and you rejected that. So where you want to have the power, you don't rely on goodwill and policy and the way it has always been done or the status quo, as we had a debate yesterday I think that was, and where you don't, you don't want to be fettered and you argue, "Gee, we don't want to be restricted and we don't need that."

I don't think there is anything more that I can say with respect to this section, Mr Chair. I just point out again the basic inconsistencies in the way in which the government is approaching this and in the way in which it is argued from both sides of the fence, either a political defence for ministerial powers or a rejection of ministerial powers in order to defend the politicians and their actions down the road.

This is once again bad law, and I really, really hope that people are going to take my suggestion about tomorrow morning and an opportunity for us to make a recommendation that we spend one more week going through this, because I think we'll continue to find areas like this which will be really helpful when we come back in the spring and we do have to deal with the mini omnibus bill to fix the amendments to the omnibus bill. I'm absolutely convinced it's going to be necessary. Every day I become more and more convinced of that.

The Chair: Thank you, Ms Lankin. Mr Phillips, followed by Mrs McLeod.

Mr Phillips: Just to follow up on the discussion Ms Lankin had, I can't for the life of me understand why the government hasn't incorporated the suggestion of some kind of a mechanism where physicians will have access to a process that they feel is fair if their hospital is closed, to a system in getting legitimate standing at another hospital.

I've a little bit of experience in this, not much, but in my Scarborough days actually I was chairman of the Scarborough General Hospital. I could see the challenges coming in about 1983 or 1984 and I—

Interjection: Got out.

Mr Phillips: No, no. I helped to form the—I think it was my idea; if it works, it's my idea—Scarborough Hospital Coordinating Committee, to try and get the hospitals working together, because you could see the handwriting on the wall, and to find ways to rationalize

services so each of the acute care hospitals wasn't unnecessarily duplicating services.

But the thing I learned there is that physicians have an intense loyalty, obviously, to what they're doing, that there is a natural competition between hospitals—some very healthy, frankly—but if you close one hospital and cut adrift those physicians and they don't feel they have fair access to standing at the winning hospital—and that's how it will be viewed in communities: there will be a winner and a loser.

Why you would ever want to set up a process where you almost guarantee that the losing physicians have no recourse but to really launch an all-out attack to protect their legitimate rights—why in the world wouldn't you have put in this bill a process that all the physicians would feel offered them some fair recourse to a fair hearing? Because I will guarantee you that in a community where there are two hospitals and one closes and one stays open, if you leave the physicians all on their own to try and get a fair hearing at the winning hospital, it is not going to happen. Human nature doesn't work that way. There should be in this bill truly a process that physicians feel gives them the fair access. Perhaps the parliamentary assistant is going to tell me that they're going to do that.

Mrs Johns: No, I was going to say that they have an appeal process. When they apply at the new hospital or the second hospital, they can appeal decisions where their privileges aren't granted to them. So they have the ability to appeal.

Mr Phillips: Appeal to whom?

Mrs Johns: The new hospital.

Mr Phillips: No, no. The decision that the new hospital has made is that they don't have standing. Who do they appeal to?

Ms McKeogh: They're entitled to a hearing before the hospital board itself. Then they may appeal to the hospital appeal board and then they may appeal to Divisional Court.

Mr Phillips: Have you ever talked to a physician who's been through that appeal process and how they feel about that?

Mrs Johns: Personally? No.

Mr Phillips: A physician who's denied standing at a hospital has that—

Ms Lankin: But that's for the purpose of when there's a challenge around the quality of their services.

The Chair: Mr Phillips has the floor here.

Ms Lankin: It's not around restructuring and closing services.

The Chair: We've got another conversation going on here.

Ms Lankin: I'm sorry; it's not actually on the record.

The Chair: Oh, okay. You're bothering Mr Phillips though.

Mr Phillips: They weren't bothering me, but they're probably bothering others.

I'm just saying that if you've talked to physicians who have been through that process, that's a very unsatisfactory process normally, the end. I don't know where to go from here, because obviously you're not going to do anything about it. We're down to three hours' debate now

so I kind of throw my hands up, but why you would build a recipe for problems into the bill when you have an opportunity for a recipe for some solutions is frankly beyond me.

Mrs McLeod: I just want to make the point that, as the government members keep telling us, these are extraordinary times and this bill is about taking extraordinary measures. It is not a bill about past practices or about goodwill; it's a bill about restructuring. It is also a bill which, if we ever get to it, sets out considerable procedures and powers for the government to determine numbers of physicians, quotas for physicians in particular areas.

I would suggest it seems highly logical that in a scenario where there are going to be hospital closures, because that is what schedule F is all about, the power to close hospitals, and if furthermore the government believes that there are areas of this province which are oversupplied with physicians and wants quotas to be able to control that, which is another major focus of this bill, that there are going to be physicians who do follow to the new hospital.

I don't know of any appeal procedure that might exist that would have—theoretically it might be possible, but if a new hospital says, "We have a requirement for X numbers of physicians. We've filled our requirements," it seems to me there are probably even other protections in this bill, if we were to cross-reference, for that hospital board to say: "We've got all the folks we need, thank you very much. We don't need you."

1750

So this becomes one more measure by which the government can act to reduce the number of physicians in a particular area and it leaves the physicians, I think, with no recourse at all, unless something is granted by regulation under this clause (v) which remains, to say, "Why did you choose him and not me and what happens to me now?"

We're not going to win this, it's obvious, but to suggest that the physicians are just going to flow nicely to the new hospital and that all of the physicians who are in 12 closed hospitals are going to find positions in their new hospitals seems to me to be not very consistent with the government's agenda here.

The Chair: Any further discussion? All those in favour of the amendment? All those opposed? The amendment carries unanimously.

Ms Lankin, the next one we deal with is yours, and as I read it, it is a duplicate of the one we just passed.

Mrs Caplan: See, they've already accepted one of yours, Frances. That's why they put theirs in and didn't take this one, which was identical to theirs.

The Chair: Are you prepared to withdraw?

Ms Lankin: I'm just flipping through pages, because I had a 39A from the Liberals and I see that there's a replacement, which is 39A renamed now 39B. So that follows mine. Is that what's happening?

The Chair: Yes, the 39A that was yours was a duplicate of the government one we just passed. Will you withdraw that?

Ms Lankin: Sure.

The Chair: The next one we deal with is 39A, renamed 39B, a Liberal motion.

Mrs Caplan: I'm going to withdraw this motion and I'd like to say why I'm going to. What we had originally intended was that all of those sections which we saw as tremendously unfair to physicians who were impacted by a hospital closure—we felt they should all be withdrawn so that the existing protections would be in place. But after the conversation that we've heard, in fact there are no protections in place and the only hope, the only "I'll respect you in the morning" clause, is (v), which says, "By regulation, maybe there will be something in place that will offer some protection." But it goes along with, "The cheque is in the mail," and we don't know what the plan is. We've heard from Peter, who's very well-meaning, who says they're having consultations now about something that may solve this problem.

Frankly, I am concerned that there's nothing in the legislation that assures that, because I'll tell you something—and Gerry's absolutely right—if you want to avoid the kind of real ill will in communities, you had better get something in place that's going to deal with those issues of transition. As I understand it today, the minister will have absolute hands-on ability to determine the human resource plan and approve those plans from the hospitals as they relate to physician manpower. You're going to have billing number controls under this legislation, and—

The Chair: Are you withdrawing this motion?

Mrs Caplan: I am speaking to it and then I will withdraw this, because I think the only hope is that clause (v) may be able to do something. So I will withdraw this amendment, although I do it sceptically. This bill is very inadequate.

The Chair: The next amendment is a Liberal amendment, page 40A.

Mrs Caplan: I move that clause 32(1)(z.1) of the Public Hospitals Act, as set out in subsection 13(3) of schedule F to the bill, be struck out and the following substituted:

"(z.1) authorizing any person, group of persons or other body to issue directions under subsection 6(2) or 9(8) and to issue directions amending or revoking directions made under subsection 6(2) and respecting any conditions to which that authority may be subject."

Speaking to that, part of the concern that we have with this of course is, as Mrs McLeod said, when you read these sections in the bill, nobody who hasn't had legislative experience understands what they mean. But the intention of this amendment is to do the following: It would limit the minister's power to delegate his authority to the power under 6(2) to close and redefine certain hospital services, and under 9(8) it limits the minister's powers and the directions that he would give a supervisor appointed to a hospital. Perhaps another way to look at

this amendment is that it does not permit, as the bill does, the delegation of power to direct the closure or amalgamation of hospitals. Speaking to it, that's what it does; that's the effect of it.

I don't believe the minister needs that authority, and I'm going to tell you why, and I've said this before at the committee. I believe that in fact the minister only needs two powers to be able to restructure. I'm very concerned that having the power in the minister's hands, without even requiring cabinet approval, without coming to the Legislature, without requiring a district health council report, without requiring by legislation any community process whatever, and frankly, without any appeals, without any due process, without any natural justice built in, that is wrong. It's bad law and it's wrong, and it should send a chill through every community in the province.

But there are only two powers that the minister requires, and that is the funding authority and the ability that, unless it can be proven that he acted in bad faith, his decisions on funding authority cannot be challenged. That's all the power he needs to be able to say to a hospital, "You're not going to have the budget to deliver the services and I'm transferring those funds to other hospitals for service delivery."

Why a minister would want the power to close, amalgamate and merge and interfere with local planning decisions, frankly, is beyond me when he has all the authority and funding power that he needs now. He has that now. I think that's not a power that any minister should have, the absolute power to be able to arbitrarily say, "I'm going to force a merger" or "I'm going to close a hospital."

This amendment is a very important one. I'm telling the minister—I'm trying to be helpful—through the parliamentary assistant, you do not need the powers. You have them in your funding authority, and you now have them or you will if you accept that you can only be sued if you haven't acted in the public interest and in good faith.

The Chair: Mrs Caplan, it's 6 o'clock so we will recess until—

Ms Lankin: On a point of order, Mr Chair: Just very quickly before you do, I want to give notice that I will be moving a motion immediately upon beginning tomorrow at 9 o'clock, with respect to extending clause-by-clause, and that I offer to the government members my availability tonight, after you've had a chance to consult, if you would like, to work together on the wording of that motion so that it is one that you could support. I'd be pleased to draft it in consultation with you.

The Chair: We stand adjourned until tomorrow morning at 10 am.

The committee adjourned at 1758.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

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*Tascona, Joseph N. (Simcoe Centre / -Centre PC)

Wood, Len (Cochrane North / -Nord ND)

*Young, Terence H. (Halton Centre / Centre PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Caplan, Elinor (Oriole L) for Mr Sergio

Clement, Tony (Brampton South / -Sud PC) for Mr Kells

Ecker, Janet (Durham West / -Ouest PC) for Mr Stewart

Johns, Helen (Huron PC) for Mr Danford

Lankin, Frances (Beaches-Woodbine ND) for Mr Marchese

McLeod, Lyn (Fort William L) for Mrs Pupatello

Phillips, Gerry (Scarborough-Agincourt L) for Mr Grandmaître

Sampson, Rob (Mississauga West / -Ouest PC) for Mr Flaherty

Cooke, David S. (Windsor-Riverside ND) for Mr Wood

Also taking part / Autre participants et participantes:

Patten, Richard (Ottawa Centre / Centre L)

Silipo, Tony (Dovercourt ND)

Ministry of Health:

Finkle, Peter, director, central region, institutional health group

McKeogh, Carole, legal counsel

Schwartz, Ella, legal counsel

Clerk / Greffière: Grannum, Tonia

Clerk pro tem/ Greffier par intérim: Decker, Todd

Staff / Personnel:

Baldwin, Elizabeth, legislative counsel

Filion, Sibylle, legislative counsel



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First Session, 36th Parliament

**Assemblée législative
de l'Ontario**

Première session, 36^e législature

**Official Report
of Debates
(Hansard)**

Friday 26 January 1996

**Journal
des débats
(Hansard)**

Vendredi 26 janvier 1996

**Standing committee on
general government**

Savings and Restructuring Act, 1995

**Comité permanent des
affaires gouvernementales**

Loi de 1995 sur les économies
et la restructuration

Chair: Jack Carroll
Clerk: Tonia Grannum

Président : Jack Carroll
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENT

Friday 26 January 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Vendredi 26 janvier 1996

The committee met at 1000 in room 151.

SAVINGS AND RESTRUCTURING ACT, 1995

LOI DE 1995 SUR LES ÉCONOMIES
ET LA RESTRUCTURATION

Consideration of Bill 26, An Act to achieve Fiscal Savings and to promote Economic Prosperity through Public Sector Restructuring, Streamlining and Efficiency and to implement other aspects of the Government's Economic Agenda / Projet de loi 26, Loi visant à réaliser des économies budgétaires et à favoriser la prospérité économique par la restructuration, la rationalisation et l'efficacité du secteur public et visant à mettre en oeuvre d'autres aspects du programme économique du gouvernement.

The Chair (Mr Jack Carroll): Good morning, everyone, and welcome to Friday morning. Just to refresh your memory on the timetable, we break for lunch today at 12 o'clock until 1. Then we follow the order of the Legislature and the voting pattern.

When we adjourned last night, Mrs Caplan had just put on the floor an amendment, page 40A, so we will pick up from that point. Mrs Caplan, you have the floor.

Mrs Elinor Caplan (Oriole): Mr Chairman, 40A is on the floor. The intention of this, as I said last night, is the limitation of the minister's powers. We don't believe that the minister needs all of the powers in the bill to accommodate the restructuring that's necessary. I'm not going to speak to it any further.

The Chair: Any further discussion?

Mrs Helen Johns (Huron): The government believes that we have given regard for public opinion and local input through the district health council. Mrs Caplan knows that we've discussed section 6 and that's probably why we're not talking very much about this this morning.

We need to be able to allocate all of the powers in section 6 to the commission in order to initiate hospital restructuring. We don't intend to endanger quality of care by reducing the funding to the hospitals and just stopping them from having funding. That's not the way we intend to do restructuring. The commission needs to be able to have all the powers for all actions in 6—amalgamations, mergers, closures—not just what is suggested in 6(2), which is directions re specified services.

Mrs Caplan: Just to Mrs Johns, no one is suggesting that you're going to, or that you should, in any way affect patient quality care by cutting funding. In fact, I think your \$1.3-billion cut in hospital funding will have exactly that effect, and that's what's driving this restructuring. So what you just said is absolutely untrue. What I did say to you is that the minister has sufficient power, with his funding powers, to restructure.

Again, no one is suggesting a cut. What we're saying is that you move those funds around and that's how you restructure. Don't you understand that? That's what this is saying, that you don't need the minister to have absolute power without any regard to due process or individual rights. He has the power and the ability to say, "We're going to move the hospital funding around as part of our restructuring." No one's suggesting a cut. The only person suggesting a cut is your government, and your cut to the hospitals is \$1.3 billion. So don't try to deceive the people.

Mrs Lyn McLeod (Fort William): I want to start the morning off by making it absolutely clear what we have to work with this morning, with two hours in this committee that's left.

Mrs Caplan: Exactly.

Mrs McLeod: When Ms Johns says that the reason we said we would not debate this particular amendment is because we've already had debate and they've somehow satisfied our concerns in this area.

If that's going to be the response when we try to facilitate moving on to other important sections of this bill, then we might as well stop now and let's just have a free-for-all about how angry we are at what is still going to be in this bill at 12 o'clock today and at the process we are going to begin at 1 o'clock today where nobody is going to even know what amendment it is that's being moved and voted on.

The only reason that we were prepared to let this go without debate, Ms Johns, is because we recognize that it's taken us days of debate in order to get one small amendment agreed to by the government that would at least give regard to the district health council when the minister makes his unilateral decisions. And we recognize that we have lost the debate about not allowing the minister to delegate his incredible powers; that we got one small amendment, after considerable debate, that would at least ensure that he couldn't override every other act of the province of Ontario when he carries out his powers; and that we did get an amendment that recognized the need to protect patient privacy when you close a hospital.

We've come to have a sense, after days of debate, of how little we're going to be able to gain. We've got huge issues that this committee is not going to be able to address, which is why we wanted to try to expedite it. But at least let's not make statements that will infuriate us by suggesting that any of what's come before is satisfactory to us.

The Chair: Any further debate on the amendment? Shall the amendment carry?

Ayes

Caplan, Lankin, McLeod, Phillips, Silipo.

Nays

Carr, Clement, Ecker, Hardeman, Johns, Sampson, Tascona, Young.

The Chair: The amendment does not carry.

Ms Frances Lankin (Beaches-Woodbine): I've tabled a motion with the clerk, if I may put it before the committee now.

The Chair: We will distribute copies.

Ms Lankin, if you'd like to read the motion, and then you have the floor.

Ms Lankin: I move that this committee recommends to the three House leaders that they convene an urgent meeting to discuss amending the order with respect to Bill 26 when the House returns on Monday January 29, 1996, that would return the bill to the standing committee on general government for clause-by-clause consideration to allow for public scrutiny of the over 350 amendments to the bill.

Yesterday, I gave notice that I would be tabling this motion before the committee and I asked government members of the committee to think long and hard about the process we had come through, to have discussions with their caucus colleagues, with the ministers of the crown, with the government House leader and with the Premier so that we would know that whatever the disposition of this motion is today—because, let's be honest, the disposition of it is in the hands of the government. They have the majority here on this committee. Whatever that disposition is, we would know it carried the full weight of decision-making of the Premier and the government House leader, who is also the Minister of Finance, in whose name, or whose ministry, this bill stands.

Yesterday was almost a classic example of what we have been through from just about day one with this bill, a bill that was drafted very hastily, that contained all sorts of not just drafting errors but unanticipated consequences that the government has had to scramble to fix, consequences that the government politically didn't even condone and, I would argue, didn't even know were in the bill until we had demanded some sort of process that led to some public scrutiny that allowed us to understand some of the elements of the bill. I think everybody knows the history, I don't need to take a long time in recapping what it took in terms of the efforts of the opposition to get public hearings that would travel the province and public hearings that would span into January so that there would be some reasonable time for people to actually begin the process of understanding all of what was contained in this very large and complex bill.

This week we have the process of clause-by-clause where we come in and the government has tabled, in the beginning, 139 amendments to its own piece of legislation, followed over the course of the week, as we were able to point out additional problems, by another 21 or so amendments. We're up to 160 government amendments. That does not even count the 200 or so amendments from the Liberal Party and the New Democratic party that have been submitted to this bill.

We know the number of people who have expressed concerns about the content of the bill, about the process of not having a chance to be heard on the bill and about the process of what this committee's been going through over the course of this week.

I can tell you that, as we speak, the phone in my office is ringing off the hook with people calling in saying, "Do something to stop this bill on Monday." The demands on the opposition parties to take actions into their own hands and to break the deal are tremendous, and we have said that a negotiated arrangement was arrived at and it is important that we respect, having a process of negotiations, the end result.

But it is also important that where we see changed circumstances in terms of the hundreds and hundreds of people who wanted to be heard who didn't have a chance, in terms of the hundreds of amendments that have been tabled that will never see the light of public scrutiny—we will never have an opportunity to debate them, we won't have a chance to amend them, even those we will be able to debate up until 1 o'clock today. There won't be any opportunity to amend the amendments.

1010

You saw very clearly yesterday the necessity to be able to deal with these things in an orderly fashion and to be able to actually get at the root issues and determine whether or not there are things that we can convince the government need to be fixed, as we did yesterday. We had the spectacle of, at 4 o'clock, at the very last minute that an amendment could be tabled, folks scrambling to get a government amendment tabled to fix a problem that we had identified. It took us 45 minutes to convince you of the problem, but then when we did, you got an amendment tabled at the last minute, an amendment that was technically out of order. We had to give unanimous consent to get it considered, which we did because we thought the issue was important enough that we should deal with it. You may say, "See, the process works." The process worked there, up to 4 o'clock, but that process isn't available to us any more.

It's really important, I think, that the government, which has the ability here to say, "Okay, we will re-enter discussions about the process through which we will deal with the remaining amendments to this bill," and I believe remaining problems that we would uncover as we go through this bill—you have the power to deal with that. You have the power to have discussions with the House leaders and to determine that you're going to head in another direction with this and you're going to give another period of time—and I didn't specify in this amendment, I didn't hold you to anything. I didn't say it has to be one day or four days or two weeks, I've left that up to the government House leader to discuss with the other House leaders.

The point that I'm trying to underscore is that we have in front of us a bill which is complex, which has huge implications—I don't care whether you want to support the bill down the party line or not, I say to the government members, you know it has huge implications and surely you want to at least get it right. Even on those points where you may disagree with us in content, there have been points we've brought up where you saw that

the legislation had a problem in how it had been drafted or points that had been missed or left out. Surely you want to get it right, at least. Surely you want a process that you can look back on and say, "Well, at least we gave it the time," to be able to say at the end of the day, "The bill we passed is one that we could support and one that we believed is the best law, based on what we as a government wanted to do." Surely you want to be able to say that. You can't now.

I challenged you yesterday, and I would do that again today, to say, is there any one of you who can say with assurance and with confidence, and with a straight face, that in these 300-some-odd amendments that are left to be dealt with you know that every opposition amendment you're going to vote against is a bad amendment and that every government motion you're going to vote for is a good one and that there aren't any problems in here or that there aren't any unexpected consequences, that you've gone through them all and that you've had debates with people who have differing points of view than you on every one of those amendments so that you've been able to canvass what the whole range of possibilities might be, and you've come to the conclusion that you know and you're comfortable that it's right and you're going to vote for it?

There's not one of you who can say that, so how can you support a process that at 1 o'clock would have us start to simply, page by page, vote, without any explanation of what the amendment is, without any debate, without any understanding? Talk about a sham of a democratic process.

It is true that in any clause-by-clause there is always the possibility that something's going to be left over at the end, but not—and let me make it visual. These are the amendments that we're dealing with. These are the ones that we haven't yet dealt with. This little piece here is what we've gotten through so far, and we have made progress. Let me say we've made progress. Yesterday we dealt with a lot of amendments and we actually got you to move and change a few things which were important, but look at what we have left to go through.

There is no argument, I think, that you could make that will have credibility with the public of Ontario to say that it is so important that you have your bill on January 29 that you can't take a few more days to go through the rest of these amendments and debate them and to try and fix the worst problems that we know we will eventually find in this bill. There is no argument.

Mr Clement, I know, will talk about the fiscal situation and he'll talk about the \$1 million more an hour we're spending than we're taking in. I say to him, on January 30, even if I disagree with your numbers, but to use your numbers, we'll still be in that situation. This bill won't, over the course of one more week, address that problem that you put forward as your reason for everything you do, your smokescreen for every worst excess of democratic abuse that you have put the people and the parliamentarians of Ontario through over the course of the last two months.

There is no argument you can make that would deny the logic of taking a few more days, and whether that be three more days or six more days I leave to you to

determine and leave to the House leaders to work out. There is no argument that you can put forward against the logic of that in terms of passing a good law.

I don't know what happened over the course of last evening in your discussions. I had invited people, if you felt that it would be helpful, to discuss the content of the motion so that if you had any kind of sympathy for the argument I was putting forward and you wanted a motion that you could support, I would have worked with you to draft the wording. I got no phone calls last night. Mr Chair, my phone didn't ring. I actually this morning was kind of pessimistic but I rushed into the office and hoped that maybe there was that little pink slip saying: "Call Tony. Urgent." It wasn't there.

My last moments of optimism: Maybe you anticipated the nature of the motion I was going to put forward and you determined that you would be able to live with the wording or that you would be able to, by unanimous consent, change the wording. I'd be interested in that possibility if that's the case.

I fear that you're just going to stonewall us one more time, without any logical reasons that you can put forward. I'll be interested in seeing the magic of our legal counsel friend across the way as he tries to spin the defence in this court of public opinion. I suggest it will be a challenge unlike any that he has ever had in his legal career.

Mr Gerry Phillips (Scarborough-Agincourt): He's a very bright guy.

Mrs Johns: Are you trying to psych him out?

Mr Phillips: He said he was very bright.

Ms Lankin: You're right, Mr Phillips, he did say he was very bright, but he also said he was not infallible, so we'll see how this unfolds.

But very seriously, let me say to you that there are obviously, and have been through the course of debate on this legislation, very different political positions that the parties have been taking and there are very different ideologies that drive our positions and there are very different political agendas that governing parties, opposition parties and the three political parties have with respect to something as politically charged as this bill, and I acknowledge that. But let me also say to you, at the end of the day we are all elected members of the Legislative Assembly of Ontario. We all have a responsibility to the public of Ontario with respect to the passage of legislation to make it the best legislation possible.

There have been amendments which have taken an extensive period of time to debate; I don't doubt that that's one of your points. But let me point out to you that one of those sections, and I believe it was section 6, which between a Liberal amendment and a New Democrat amendment took almost two hours to debate, we finally got you to agree to the insertion of the words "having regard to the reports of district health councils," to give some linkage to the minister's powers under that section. As far as I'm concerned, those two hours were just about the most important two hours that I've spent in this clause-by-clause because I actually achieved something in the legislation which will improve that legislation. It's minor, but it's an improvement in that legislation. I actually got you to listen to the arguments.

We spent 45 minutes yesterday on the issue of the concern with privacy of medical records held by a hospital when the hospital is directed to close. We actually got you to agree to an amendment. Yes, it was 45 minutes of time on one section of the act, but incredibly important and very important that we actually got legislative change to fix what was a problem that you didn't even realize was there. In fact, you spent the first half-hour of that defending the clause because you knew that the privacy commissioner had no problem because it hadn't been mentioned and legal counsel at that point in time had suggested that she had an assumption that it wasn't a problem because it hadn't been mentioned. You wouldn't make the phone call. So Ms Caplan and I scurry out, get a phone, both make a phone call and find out they hadn't even looked at it, so your basic premise of argument had been wrong. I appreciate that then we got an amendment. But we don't have that possibility available to us any more, unless you pass this recommendation and then unless the government House leaders can come to some kind of agreement.

1020

I said yesterday that if in fact you defeat this and in fact you continue to ram this through and pass this bill on Monday, I can see a process—and I'm reluctant to suggest this, but perhaps we'll do it from our party if the Conservatives aren't interested—where we continue clause-by-clause analysis of the rest of the 350 amendments that we didn't get through, and then present you with all of the problems that are in your bill that you didn't have time to find out about; a bizarre way to make laws.

At the end of the day, we are all elected members to the Legislative Assembly. We are all legislators and we are all responsible to attempt to pass the best law possible, even if we disagree with the intent of certain sections of laws or certain bills that are being brought forward. You have as much responsibility with respect to that as I do, and I have as much responsibility with respect to that as you do. We can only exercise that responsibility if the process that is provided to us by the Legislative Assembly—and in this case, with a majority government, that means by Ernie Eves and Mike Harris—is one that is adequate to do the job and the challenge that is before us.

I remind you that you're the ones who have filed 160 amendments to your own bill, even forgetting about our amendments. In the short time you had, you found 160 problems, errors or areas where you needed to respond to public input. Over the course of the last couple of days, you've filed 14 additional amendments. I believe this process would continue. I believe you would continue to improve your own bill, even if I disagree with the content of it in some areas. I urge you to give the legislative process that kind of chance, that opportunity to work through and to identify the problems and to try to respond as best we can as legislators to fixing those problems.

So I hope that you will be supporting this motion, and I hope that support will come with the support of the Premier and the government House leader, and I hope that I get to spend another week with you going through

this wonderful process of making legislation in the province of Ontario, what I'll always refer to as a bad law. But I'm prepared to put the time in to try to make a bad law a little bit better.

Mrs McLeod: Mr Chairman, as you're aware, we placed a similar motion yesterday, urging that there be more time given to the clause-by-clause amendment process so that we can at least have some debate on the amendments that will not be touched by the end of the morning.

We even proposed that all of those amendments which were debated and had been dealt with by the committee would be passed into law by the government majority through a vote in the Legislature on Monday and that we would just defer the balance of the amendments. That motion was defeated. I'm not optimistic, I guess, that the committee is going to revisit that, unless there has been some intervention by the Premier.

After the motion was defeated yesterday in committee, I did write to the Premier, asking if he would direct his House leader to bring in a unanimous consent to the House that would allow for a deferring of amendments that will not be debated in this committee. I know that the Premier has said that he is not spending time on the details of the bill, that he believes that's up to his ministers to do, that he's not aware of all the details of the bill. But I truly hope that the Premier of this province has at least heard the public concern that we on this committee have heard and that in fact he has heard some of the outrage that we have heard as this committee has travelled across the province.

I don't think that there is a government member present who has been on the road with this committee and who sat through the first week of hearings here in Toronto who would not have to agree that there was tremendous public concern expressed about virtually every aspect of this bill and that not only was there great concern expressed, there was outrage over and over again. There was public outrage at the way in which the government had tried to force this bill through before Christmas and at the very limited amount of time that the government had agreed to allow it to be heard in public hearings.

We've talked over and over again about the thousands of people who were denied the opportunity to present at these hearings, tried to get extensions of the public hearings and failed in that. Surely, surely there has to be an opportunity, at least for those who got to present their concerns one way or another, to have those concerns considered by this committee in the amendment process. That's what this was all about. That's what this week was all about: to take all those public concerns, as well as government's own chance that they'd had to look at their bill in more detail and to discover the at least 160 areas where they thought there were problems and bring some changes to the legislation. If we don't take time to do that, it makes a farce out of the whole public consultation process.

We heard concern; we heard outrage. I think it's fair to say that the other thing we heard over and over again when we were out for public hearings was real fear in the population about what this bill would do and that that

fear was created by tremendous confusion. It is such a massive bill, it covers so many areas, it brings such changes, that people simply don't know, they don't understand what it can all mean, and they are tremendously afraid of what it will do as a result of that.

I think if the public has been watching this proceedings at all and they see the government bring in 160 changes to the bill, then that's going to add to the confusion. At the very least the public has a right to know from the government what those 160 changes are. What do you as a government plan to do to this bill? Yet as I understand the process that we're about to go into, we will not have an opportunity to even be told in committee what the changes are that the government is bringing forward.

You have tabled them. We have seen the stack. This is what's left to do that we have not dealt with yet. At 1 o'clock this afternoon, I understand that it may be a process as sterile as saying, "Amendment 133, carried or not carried. Amendment 339, carried or not carried," that we may not even have an opportunity to ask you to read that amendment into the record so that we even know at least what the amendment itself states.

There were amendments being tabled yesterday afternoon at five minutes to 4, Mr Chairman. You would have to agree it was confusing even for the Chair of the committee to know what was on the table at that point because that changes the whole numbering system. I think it's going to be tough for us to know what amendment 339 is this afternoon. How can the public possibly know what amendment 339 does to answer the concerns that they raised about this bill?

When members of the government and members of the opposition go back into their ridings tomorrow and deal with the kind of phone calls that Ms Lankin was describing that we get in our offices, what are we going to tell them about how this bill has changed? We know the changes from the ones we've debated, but how are we going to know and be able to tell people exactly what this bill is like now? Because it won't have been debated; we'll just have gone through a sterile process of, I suspect, routinely passing the 160 amendments that the government has tabled and routinely rejecting the amendments that both opposition parties have put forward in a good-faith effort to respond to the concerns that we've heard from the public.

I agree with Ms Lankin that the result of this is going to be bad legislation. This bill is bad legislation, but there will be mistakes that could have been corrected that will be missed. Ms Lankin's mentioned a couple of the areas that we, after a hard-won fight, have been able to get changes to.

I think the issue that came up yesterday where there is a whole new aspect opened up with this bill with the closing of hospitals and the minister's ability to go in and close hospitals and the fact that the bill didn't address the issue of protecting the confidentiality of patient records when there is a hospital closure, and that the government, although they fought against that amendment that we put forward as being totally unnecessary, when they actually had to step back and learn from the privacy commissioner that he hadn't addressed the issue because he has no jurisdiction on the issue, agreed finally that it was an area

that they had simply overlooked, and that they would put in some protection for confidentiality of patient records.

1030

When you have a bill this massive, and you have a government saying, "Yes, we overlooked something as vital as the protection of patient confidentiality," then I think people have reason to be concerned that this bill, without any further debate on the amendments or the changes, should just be forced into law.

Maybe even more important is the fact that we're not going to get to major sections of this bill, and I think back on the public hearings, and I think of the presentations that we've had, the concerns that have been expressed in areas of cabinet's ability to decide what's medically necessary, cabinet's ability to set the fee for an insured service in health care at zero.

So basically they're taking away medical coverage for individuals, the fact that there's so many parts of this bill that give the Minister of Health power to practise medicine without a licence, as one presenter said to us, the fact that we're not going to get to the drug benefit plan with any kind of debate so the whole copayment issue and all the concerns that were expressed by psychiatric patients and disabled advocates about the cost of the copayment to them, we're not going to get a chance to look at.

We're not going to get a chance to talk about all the evidence we heard on the deregulation of prescription drug prices, the evidence we heard, with few exceptions, that said that was going to result in an increase in drug prices. We're not going to get to talk about that.

We're not going to be able to summarize the evidence that we heard and suggest that an amendment that is here might be worth considering on the basis of that evidence. We're not going to get to the entire municipal section of this bill with all of the changes that that brings in the relationship between municipalities and the province and the way in which we are governing this province.

We're not going to get to the Pay Equity Act changes. Pay Equity Act changes were the subject of an entire consultation of a single bill when they were brought in before. We're not going to get to the pension benefit clawback. Unfortunately, and I truly think it's unfortunate, we will not get to a number of amendments that we have tabled, that we call the democracy amendments, because we've gone through this bill very carefully and identified all those areas in which we believe there is a true abrogation of individual rights, of violation of due process, of the right to know, the right to notice, the right to appeal.

We proposed a number of amendments which would put those rights back in and which would, furthermore, if the government is determined to give itself all the powers that this bill gives them, put some check and balance on the way in which those powers are used. Because realistically we knew at the start of this process that the government wanted this bill, and we were going to try and make it less dangerous, and we hoped the government would have time to fix its mistakes, but that they were going to pass the bill. So we wanted to at least have some amendments that would require a regular reporting and a due

notice to the public of the exercise of powers under this bill. We're not going to get to talk about any of that.

It seems to me that there should be no reason for the government not to have at least a week's delay to at least be able to talk about their own amendments, to at least want to be able to say to the public, "This is what we have learned from our hearings." You've said over and over again: "We listened to you. We're an open government. We're here to hear you." Don't you want to say to the people, "We heard you, and our amendment 159 says this and this because it's a response to what you said"? Don't you even want the chance to take some credit for what you are prepared to change in this bill? There won't be an opportunity for the government to do that if we don't get to debate the rest of these amendments.

I suggest to the government that there is no downside for you in taking another week. The \$1 million an hour is not going to be affected by taking one more week to debate the amendments on this bill. There is absolutely no way that one week's delay or a few days' delay is going to change your ability, as a government, to go out and make all the cuts you want to make as fast as you want to make them.

We know you've got a majority. We know how the democratic process works. When it comes to a vote, the majority wins. You will pass this into law at whatever point in time you, as a government with a majority, decide you are going to pass it into law. We can't stop that, nor should we have the ability to stop it.

All we're asking for here is reasonable process, the right of people to be heard, the right of the concerns that have been expressed to be taken into consideration and the right of legislators to conscientiously try to make good law, because that's what this is all about.

I would just say that if this government is so absolutely determined to ram this through without even a week to consider its own changes in a public session and have them understood, there is going to be considerably more public concern, a great deal more public confusion and I think a tremendous public outrage.

Mr Phillips: I honestly think if I were on the government side I'd want to support this motion. I guarantee you, absolutely guarantee you, that the gang that brought you the bill is the gang that's bringing you the 160 amendments, and they're making the same mistakes in the amendments that they made in the bill. The problem is that you're going to be on the hook for it because you're agreeing to this process.

The evidence of that was yesterday. Here we were told time and again that the privacy commissioner is very happy about this, not a problem at all. This is, for the public's benefit, on the closure of hospitals and protection of your medical records. Then we find, because my colleagues Mrs Caplan and Ms Lankin phoned the privacy commissioner, you were dead wrong. It was only literally at the last moment that we saved you from making a big mistake. As I said yesterday, what could be more fundamental than protection of medical records when a hospital closes? But it was completely forgotten.

So I guarantee you, absolutely guarantee you, that you're making some significant mistakes in these amendments that will only be found by an opportunity to debate

them and have the opposition challenge you on them. If they stand up to challenge, move on. But yesterday it didn't stand up to challenge, as you acknowledged, and so you were forced to make some revisions. So I will tell you that we will be up in the Legislature after this bill is passed saying: "You see, we told you. We offered you the opportunity to simply give some sober debate around the amendments."

The public must be absolutely shaking their heads at this: "First the government said the bill was perfect, then they acknowledged they had to make 160 amendments to the bill, and then they don't want a reasoned debate on it? For what possible reason?" Why would you not want a debate on those amendments? Yesterday, you were forced to acknowledge you'd made a significant mistake and were forced to change it, and the bill was improved.

So what we've got here is, I know you've got your marching orders. I know that the government wants to close off this embarrassing spectacle. I know you people, as I said yesterday, can hardly wait for the end of the day. You'll get your revolution hero badges because you've done a fine job. As I said yesterday, General Stonewall Harris will present this to you in the corner office later today, and you've earned it. Believe me, you've earned it. Mr Carr is here to pick up—this is the first day he's officially worked on it.

Mr Rob Sampson (Mississauga West): He doesn't get one.

Mr Phillips: He doesn't get a hero badge. But he'll get a small badge—sort of a handshake and a Purple Heart. But my point is this: that even you certainly have to acknowledge that the amendments you've proposed should at least be subject to some challenge and some debate. We're performing major surgery on this bill. Whoever did the first operation and put this together, they were very clumsy, your cabinet friends, and now you're trying to fix the thing up. The problem is that now, without even being challenged on the surgery you're going to perform, at the end of the day we're going to sew this patient up; you're going to jam these amendments inside the patient, zipper it up and wheel it upstairs to be released on Monday. I guarantee you, Al Leach has left some of the operating instruments in this body. I guarantee you that there are still some significant mistakes in there that would be brought out through debate.

For the public watching us, I seriously believe they can have no other conclusion than, "Why would they not want to debate their amendments?" And you could say we've had opportunity for debate. Well, my colleague said it took I think two hours to finally wring out of you an admission that you were wrong and, as a matter of fact, it was right up until the last moment, Mr Chair, until we phoned the commissioner, you were absolutely denying there was a problem. So I think it's been time-consuming but productive, what we've done so far. Surely getting this right is more important than simply ramming it through.

1040

My last point I'd make is I realize that we have a significant deficit crisis, but you got elected in June. You waited until November 29 to bring this forward. If it was

like a million dollars an hour ticking by, I would have thought that a competent government would have said, "We've got to deal with this in August, in September, in October." It was November 29 before you brought this forward, for whatever reasons.

So I would say to you, surely something, if you believe it's that important, and if you acknowledge that whoever put this thing together in the first place—and I would love to be at your first caucus meeting when you get a chance to ask the question, "Who put me into the position of having to defend this thing?" The people who put Bill 26 together put the 160 amendments together, and they're just as suspect, Mr Chair, as the original bill. So I cannot for the life of me understand why you wouldn't want to save yourself from malpractice suits. At least delay it for a week and have some reasoned debate around this thing.

Mr Tony Clement (Brampton South): Hard acts to follow. The mover of the motion, Ms Lankin, asked, I guess asked rhetorically, what I did with my evening. I wanted to record on the record what in fact I did do with my evening rather than call her, and I apologize if she was waiting by the phone.

Ms Lankin: Every minute.

Mr Clement: I did do a lot of thinking. I confess I did get back to my riding of Brampton South and I did have an opportunity through a riding event to talk to some people in Brampton. I actually did make it home, and my kids were already asleep but I saw my kids while they were sleeping and I spent some time with my wife. It kind of got me out of what occurs, I'm sure as the more learned and experienced members opposite know, what happens when you are involved in a process such as this. Perhaps it's natural and understandable, but you really focus in and you get trapped and captured by the minutiae—

Mrs McLeod: That's what this is all about.

Mr Clement: —of the everyday clause by clause, trying to get your message out to the media, trying to unfurl the banners if you're in opposition. I understand all that.

But I was able, I would like to report to the committee, to step back a bit, to step back away from the minutiae and get back a bit to the first principles of why we are here. And I don't mean that in the sense of why someone decided to condemn me, to put me on this committee in the first place, but even step back further than that. I didn't even spend a lot of time worrying about if Ms Caplan follows through with her threat and gets me disbarred. I spent a bit of time worrying about that, but there are wider issues at stake than my law society fees.

The bigger picture, to me, and the reason I believe I was elected and why all of us were elected to this team, was that the people of Ontario were telling us that Ontario was broken, not that the people of Ontario were broken; they work hard. They've worked harder in the last 10 years than they've ever worked before. Yet the harder they worked, the further behind they fell. The more they put into their jobs, the more their jobs were on the line. The more they tried to plan ahead for their kids, the more taxes government was taking from them. The more they tried to create a province that was working, the

more the status quo was denying them the ability to build a province that was working. So they I think were sending a message to the political class, to the élites, to the media élites as well, that the problems had to be fixed now. We've had for too long, "The problems will be fixed two, three, four years from now," and that time never comes.

Mr Phillips: You said you wouldn't cut health spending. That's what this is all about.

Mr Clement: The problems had to be fixed now. That's what they were telling us.

We're going to hear a lot about how concerned the people are. I acknowledge there's an anxiety out there; yes, there is an anxiety out there. But the anxiety is that things won't change, that somehow we are mired into a circular loop spiralling downwards. They want the change. They understand that without the change—

Interjection.

The Chair: Mr Phillips, I know that you're a very fair person and I think I would like to call on your sense of fair play and allow Mr Clement to have the floor, as he allowed you to have the floor.

Mr Clement: They understand that without the change, there is in fact no status quo. What we have is a deteriorating status quo. Without the change, the health care system will not be preserved. Without the change, police force security will not be preserved. Without the change, we will not have the resources to educate our children, because the status quo will deny that.

The status quo means \$10 billion a year more in debt. The status quo means that instead of \$9 billion a year of interest on the debt, which doesn't go into programs, doesn't go into health care, doesn't go into education, by the end of our term it will be \$20 billion, an extra \$11 billion coming out of health care, coming out of education, going to the foreign bond-holders. That's what the status quo meant to them, and they were sending a very clear message. I heard that message and Mike Harris heard that message and my colleagues heard that message.

There has been some criticism levelled this morning respecting how we have responded to the public process. I don't know what it's like, because I've never been an opposition member, but I think I can understand what it must be like to be in opposition, to demand that the government listen and make the changes that would improve the bill, and then, when we find a way, as government, to carry on with the ultimate goal of the bill, to introduce the change that is necessary, but to do so in a way that meets some of the concerns that we have heard along the way, when we strike that balance as parliamentarians and as members of the government, I can understand why you would want to criticize us.

You would have criticized us if we had made no amendments because we hadn't listened, and now you criticize us because we are making amendments and we acknowledge the bill can be improved. I understand why you have to do that as part of your role in our democratic process. But I would ask the viewer who is watching to please understand that we listened, that we took seriously this process. If the price that has to be paid to improve the bill, to get to where we have to go as a society and

yet do it in a way that meets some of the concerns that were expressed on privacy, on the role of arbitrators, on the relationship with the docs, if the price that has to be paid for making the changes that understand their concerns is that we be criticized, then I suppose as government that's the price we must pay. That is what being in government perhaps is partially about: taking the slings and arrows from the opposition even when you're trying to improve things. I guess we all have our roles to play.

My final point, sir, is that I regret, I really do regret, that at 1 o'clock perhaps the opposition feels that we will not have had the time on the record. I think what is more important is that we found the amendments that improve the bill, quite frankly, but I do regret that we did not get to schedule A of this bill until 3 o'clock on Tuesday, a day and a half after we started the hearings. I do regret that we dealt with motions which dealt with whether the campaign manager of the Tory party should be compelled to appear before this committee, or invited.

1050

I do regret that we spent time debating the Ontario Taxpayers Coalition pledge and who signed it and who didn't. I regret all that because it did take away time from the substance of the bill and the clause-by-clause consideration. My only defence is, apart from not having moved any of those motions, that we listened throughout the three weeks of hearings. We as a government tried to grapple with the end goal that we have to get to but do it in a way which alleviates some of the concerns that were expressed, and that ultimately we do have a responsibility to act, and that every minute of every hour of every day that we do not act, we are not fulfilling the responsibility that was entrusted upon us by the people of Ontario.

Mr Tony Silipo (Dovercourt): I have to say I regret very much the response that's being taken by Mr Clement, I'm assuming on behalf of the government members, this morning. I would have hoped that with Mr Carr's presence here today, someone who has been on the opposition benches, that he may have been able to at least impress upon his colleagues that what we are talking about here is not just the rights and the role of the opposition, as I think Mr Clement seems to be indicating in his comments, that this is not just an exercise to ensure that we as opposition members get our day to be able to criticize what the government is doing.

That is a very legitimate role, I think as even Mr Clement has admitted, but this is about far more than that. This is about far, far more than that, because the criticisms that have been laid before this committee, and through this committee to the government, have not come just from the opposition parties. They have come from the people of the province from all walks of life, from every group that you can think of. That is something that, even though the government members will never admit it publicly, I know is something that has got to be troubling them greatly.

When groups like firefighters and police officers, who in their own descriptions were instrumental in helping this government get elected, came to this committee time after time using words like, "We feel betrayed by the actions of Mike Harris and the Tory government"—their

words, not mine—then I think it's got to shake these folks.

While they're putting up a brave front today, as they have throughout the week, in carrying out their marching orders, I think it's shameful that they would not show more concern and more respect, not for the views of the opposition, but for the views that have been expressed throughout this whole crazy, ridiculous process by members of the public, including many members of the public who supported them in their election to the government.

Mr Clement likes to sort of limit this and paint this again in the kind of rhetoric that we've heard throughout the term of office of this government, which is that there was a message given to all of us on June 8 that change needed to happen. Well, of course there was a message that change needed to happen. There isn't a person in this Legislature, there isn't a person on the opposition benches, who is saying that the status quo needs to continue. So let's just put that charade aside and let's not pretend that we've got the government on the one hand that's saying, "Change has to happen," and the opposition on the other hand saying, "No, no, no, we don't want any change at all," because we all agree that change needs to happen. What we've been debating through this bill and what we've been debating since this government was elected is the nature of the change and how you bring about that change.

You don't bring about that change, in our view and in the view of many people who have appeared before this committee, by dismantling piece by piece the very fabric of the society that we built up in Ontario over the last 150 years at least, because that's what this bill is doing, and that's what members of the public, again from all walks of life, whether they're teachers, firefighters, police officers, people who work in any of the other jobs and professions of this province, have all clearly said to us.

Even when people from the business communities have appeared before the committee saying, "We support the general direction that the government is moving in," they have inevitably gone on to list a number of serious concerns that they have with this legislation in terms of the broad powers that it gives to municipalities to tax through user fees and any other means. They have said, "You've got to limit those powers, at the very least, and you should give us more time to understand more fully what the implications of this legislation are."

Well, we aren't even going to get through clause-by-clause to any of the municipal sections of this bill. We aren't even going to get to the sections in this bill that take away the rights of 100,000 women in this province to pay equity. We aren't even going to get the sections of the bill that take away the pension rights of the thousands of public servants who are going to be laid off by this government.

We heard yesterday the interesting analysis by the Chair of Management Board suggesting, "No, no, no. It's not the 27,000 figure that was leaked out, but I can assure you it's going to be more than 13,000. It's somewhere in between," as if, somehow, firing 13,000, 14,000, 15,000, 20,000 people is more acceptable than firing 27,000 people, as if somehow that makes it better

because the number is a little bit less than 27,000. The point is, it's not fair; it's not right. And to add insult to injury, when you fire those 27,000 people, you're going to even take away their pension rights as they walk out the door.

Those and many, many other sections of this bill bring shame to the tradition of the Conservative government in this province. What we are suggesting through this motion is that the government should listen, not to us, but to the public that has spoken and that continues to speak. As we've been discussing this motion this morning, just next door to us the Ontario Medical Association has been releasing a public opinion survey done by the firm of Angus Reid which clearly says that 70% of people surveyed believe that not enough time has been given for public hearings and public discussion. We're not talking about a split of 40%, 50%; we're talking about 70% in a survey done by a well-known, reputed public opinion survey company of this province. More particularly on the health care side, in that same poll 78% of Ontarians indicated that they believe Bill 26 will have negative consequences for health care and they feel that's too high a price to pay for reducing the government's deficit.

Mrs Caplan: They're right.

Mr Silipo: And they're absolutely right. But the point that I want to continue to stress and that this motion tries to bring to the attention of the government is that this is not simply an exercise of the opposition trying to get at the government or the opposition trying to make its points across to the government. We have in this course of action—and it's one of the reasons why you have seen, probably for the first time in a long time, both opposition parties behaving pretty much in concert on this. It's because we in fact have been reflecting what the public of the province has been feeling and saying about this bill, which is that it is, at the very least, going too far too fast in dismantling a number of basic services in this province.

The motion that we have before you suggests a way to pause and suggests a way in which you can get passed at the end of the day whatever legislation you want to pass because you are the government. Whether we like it not, you are the government, and as opposition we respect that. We may not like it, but we respect that that's the decision that was made on June 8. We will not at the end of the day say you can't pass whatever legislation you want to pass, because you have a responsibility as well a right to pass whatever legislation you deem advisable. But we think it is crazy and the people of the province have told you that it is crazy for you to pass this type of legislation with this kind of a sham of a process that has not allowed for the public discussion that's necessary to take place and that even with the limited hearings has brought out problem after problem, that now, with the limited time that we've had on clause-by-clause and that we will have had by the time we get to this afternoon, will not allow us to analyse the various sections of this bill.

I have to say I'm glad I wasn't here yesterday afternoon to see the last in a series—I'm sure it's not the last, but the latest in a series of blunders from this government, bringing in, in addition to the initial 139 or 140

amendments, at the last minute, two minutes, five minutes before the deadline for filing amendments, still scrambling to file additional amendments.

1100

I'd suggest to you, Mr Chair, that if we have the opportunity to go through the rest of this legislation with the kind of care and attention that we've managed to pay so far to the health pieces of the legislation that we've had the chance to go through, we will find, as a result of the questions that we put forward, as a result of the amendments that we put forward, that the government will realize that there are many, many other sections of this legislation that at the very least warrant further amendment.

Even if they are determined at the end of the day to continue to pass these draconian measures, even they will admit that there are measures that need to be changed in this bill, but we won't get that chance unless there is an ability to provide this committee with more time into next week to continue this clause-by-clause analysis of the bill.

What we are suggesting, what we have been suggesting throughout the week we think is quite reasonable. We're not saying, let's go back, dismantle the whole thing, have another set of public hearings as we have been calling for again on the basis of what the public is saying, what we have been saying. Okay. You don't want to have further hearings. Fine. At least take another week. We'll let the process unfold in clause-by-clause. You'll get your legislation passed a week from now under the suggestion that we're making, but it will at least be legislation that you would have had the chance to look at under the clause-by-clause analysis that would be provided and you would at least be more familiar with what it is that you're passing.

If you don't do that, what you're going to find is that two months from now, three months from now, four months from now, a year from now, you're going to still be dealing with the problems that you will have caused by bringing these. I'm not talking about the political problems. I'm talking just about the legal problems that you will find because you will have minister after minister who will have to deal with the fallout of these, and if you haven't been able to do that well so far, just wait to see what's going to happen over the next year.

Mrs McLeod: I'll be brief because I've already spoken to the motion. I've already expressed my very real frustration and concern that we are not going to be able to get some time to at least consider even the government's amendments before we are forced to vote on this piece of legislation. But I cannot sit after the last three weeks and be lectured about my losing perspective on why I'm here and not respond.

I want to say very clearly to Mr Clement and to everybody else on this committee that I didn't have to be here. There is absolutely no political gain for me in having spent two weeks travelling on the road with this committee and having sat through clause-by-clause amendment.

Nobody told me I had to be here. I have still the privilege of being able to decide what I will do as leader of the party for the present time. I am here for one reason

only and I travelled across northern Ontario and eastern Ontario and southwestern Ontario for one reason only, and that's because I truly believe and have believed from the time you presented this legislation that it is bad legislation, it is bad process, it is dangerous. I wanted to hear the public concerns and I wanted to participate in trying to make this bad legislation a little bit less dangerous.

That is my sole reason for participating in this, and if you think I am angry at being lectured by somebody who tells me he went home last night and got things in perspective, I can tell you I am angry. I am probably as angry as I have ever been because I have been in politics as an elected politician for over 25 years, Mr Clement, and I have never lost sight of why I do this time and time again or why being a politician matters.

I can tell you that I have sat as an elected member of this Legislature, both in government and opposition, for eight and a half years and I travel 1,000 miles a week back and forth, 1,000 miles here and 1,000 miles back, and I can't go home at night to see my family. I do it for one reason only and it's because I happen to think that what we do here matters.

I happen to believe that good government actually matters to people and that it has an effect on the daily lives of people, including your children and my children, and that's why all of us make this kind of a commitment. So don't lecture me about whether or not I'm getting bogged down in the details and the trivia and losing my perspective. I happen to believe that the reason we are legislators, which is essentially a lawmaker, is that good laws that we're entrusted to make are the basis of good government, and that in turn is the basis of good public order.

Surely we don't lose that perspective. Surely you don't think that when we and the people working with us go through all the effort we've gone to to analyse a 211-page bill that should never have been presented in the first place, and to actually present pages and pages of amendments that we knew you would never even look at—you shake your heads before they're even read into the record—do you think we do that because we're playing some kind of political game?

I can tell you, none of us do this, except for the fact that we really hope, even those of us in lowly opposition hope, we can have some influence in making good legislation, because we happen to believe that it matters. I would have thought you, as a lawyer, would understand how important good legislation is and that even a single clause in bad legislation can not only create chaos but affect people's lives.

You used a personal example, so I will continue with it. You went home last night and you saw your kids and they were healthy. Well, I'm concerned about a clause in this bill that deregulates drug prices. It sounds like an abstract thing to be worried about, right? Deregulate drug prices. It's ideologically sound. There's no evidence that it's going to do anything to help keep drug prices—forget all that. I happen to think it matters that if somebody goes home at night and their kid is sick, not well, they shouldn't have to go out and barter for a good drug price. That matters to me, and I think it matters to people.

Obviously, we're not going to get to debate and raise our concerns and reflect on the public concerns that we've heard. But just please don't tell me that what I've been doing is some kind of political game. You have attempted to interpret every group that's presented as representing a vested interest and therefore not to be listened to, and everything we've done as opposition is somehow a political game and we're concerned about what kind of coverage we get. I just hope that at some point you will understand that some of us do this because we happen to believe it matters. Until you do, don't lecture me.

Mr Phillips: Mr Clement's talk was very unhelpful. In terms of perspective, what we're dealing with in this bill, you people promised the firefighters of this province you would not revise the Fire Departments Act until you consulted with them. This bill guts the Fire Departments Act. Mike Harris put his face on television for them, giving them that promise to get their vote. This bill guts that and breaks that promise.

You promised in the election you wouldn't touch a penny of health care. You're cutting \$1.3 billion out of it. Then you frankly try to distort the promise you made to say, "We'll restore it in four years." You never made that promise, and that's what this bill is all about. You people promised everybody in this document you wouldn't put new user fees on drugs, and this bill puts new user fees on drugs.

Then you promised people that you would protect safety, all of our police organizations, our law enforcement agencies. You made that promise, and then this bill guts collective bargaining for our police organizations and puts in the hands of arbitrators' decisions around our policing services, just so that you can make the municipalities happy in this province. You bargain away the rights of our police organizations to try to get a deal with the municipalities, and that's what this bill does.

Then Mike Harris used to go around yip-yapping about, "A user fee is the same as a tax." There are his headlines. And what does this bill do? It gives unlimited flexibility for fees. We are going to see fees like you've never seen before, and you have told every municipality, "That's just fine." We're going to see fees on car fires, we're going to see fees for safe driving schools, we're going to see fees for health inspectors, we're going to see fees, a tax, on gas stations. We're going to see fees like you've never seen before.

You say, "Keep it in perspective, everybody; keep this thing in perspective." Well, frankly, you said one thing before the campaign and now you're doing something else. You're forcing through this bill that completely guts the promises you made to the people of this province.

1110

You promised, as I say, that you would not touch health care. You, in this bill, are passing a law to steal \$250 million from the public sector pensions. You tried to do that through regulation. You tried to sneak that thing through cabinet and the union caught you, took you to court and you were guilty. The judge said: "You are guilty. You can't do that." So what do you do? You bring in a law, you pass a law that exempts yourself from the very bill that protects pensioners in this province. This

bill is filled with things that you said you would never do, and now you're giving yourself the right to do that.

My leader spoke well, as did the members of the NDP. If you have the nerve to say you are keeping in perspective the fact that this bill gives you the right to essentially repudiate your own campaign promises, it's an embarrassment. If the public have any idea why we're so angry, it is because you have frankly misled the people of the province. You have in the campaign lied to them. You are doing things in this document that are 180 degrees opposite of what you promised to do, and you're trying to force us to be in bed with you on this thing. Well, I'll just say to you, the public understands what you're all about.

There are two things that I think will do you the most damage. One is, people now realize you're incompetent. The fact that you brought this bill in with so many mistakes, now the proof is there. You're incompetent. Your government is incompetent and you're to be laughed at. The second thing that's very damaging is that nobody believes you any more. The fire departments don't believe you, the police organizations don't believe you, the doctors don't believe you, the public unions don't believe you, the nurses don't believe you, the pay equity people don't believe you. The promises that you made before the election, you have decided you are frankly going to ignore.

I used to be able to have some respect for the government. At least I thought you were doing what you said you were going to do. There are two reasons why I have no respect any longer. One is, I don't trust you any more, and I don't trust you because we also thought the cabinet ministers were going to be here to explain the bill and they didn't have the guts to show up. The second reason is, you're incompetent. The public understand, I hope, why we're so angry, when the government has stonewalled us at every turn on this bill and proven what I think a lot of people were thinking, and that is, you're not to be trusted.

Ms Lankin: I will not reiterate the arguments that have been made by my colleagues on the opposition benches. I think you have heard we speak with a unified voice in our opinion on the process that we have experienced with respect to this legislation, our basic and profound disagreement with much of the content of the legislation, but our profound disappointment and sadness at the absolute refusal of the government to provide a process for appropriate democratic debate and passage of laws of the province of Ontario.

In wrapping up, I think the only area that I want to make comment on is the speech that we have just heard from Mrs McLeod. I believe that was one of the most eloquent and impassioned and direct presentations of a personal point of view of a politician who has a great deal of integrity and had been totally provoked once again by the partisan political spin-doctoring positioning of the government member who speaks on behalf of the government caucus on this motion.

That member asked me once why I provoke people so much. I think you heard in spades from Mrs McLeod why you have provoked her and every member on this side of the table as we debate these issues. I acknowl-

edged in my opening comments on this that there are political differences, there are ideological differences and there are partisan differences that get mixed up in the whole process of how you deal with legislation, but it's part of the democratic process, Tony.

I also said, remember at the end of the day that every one of us is an elected member of the Legislative Assembly of Ontario, charged with a responsibility for the carriage of the democratic process to produce the best laws possible, even where we disagree with the content. And I take great offence at any suggestion from you that that hasn't been at the basis of what we have been attempting to do.

We can go back over the transcripts, and I can show you time and time again where I was arguing the points of law, the points of impact on the public of Ontario, the consequences of areas of the law that you were proposing to pass without amendment. So I resent deeply your comments. But I'll tell you what I resent more, and this goes to the very heart of how you have been behaving as a government and what you're going to have to come to terms with over the course of your term of office, and that's the arrogance. Because let me tell you, while Mrs McLeod was responding to you in a very direct, honest and impassioned way, there are members on your side who were sitting there rolling their eyes, like this was just another opposition grandstanding.

Let me tell you, Mr Young, I find that completely inappropriate behaviour for an elected legislator, even for an adult. When someone is providing an honest response—emotional, yes—for you to sit there and roll your eyes like this is just something to be sloughed off again, that arrogance you folks have over there that, having been elected with a majority government, you know all, you know better, and anyone who has a different opinion should be just sloughed off and dismissed, a vested interest. We hear it time and time again from your Premier.

That is an attitude that will lead you into great areas of difficulty as a government, because it means that you're closing yourself off. It means that you won't listen to advice. It means that you will miss good and valuable points that people who may have different points of view put forward. It means that the end result will suffer, will be poorer for that attitude and you will be understood to be, by the people of Ontario, aloof and arrogant and a group of people who just won't listen.

I hope that, as much as it's distasteful, it is just the early days, the bloom of just having been elected, the rookie MPPs feeling their oats, and I hope you'll get over it, and quickly. Let me tell you if this experience on Bill 26 and the public response to it isn't enough to get you over it, I don't know what will be.

But I hope you get over it, not particularly because I want to see you reform yourselves and somehow become a wonderful government of the people that the people respond to and love and want to re-elect—of course that's not in my political interest, my partisan interest—but I want you to get over it because whatever you decide as a government to do, in the end, I want to be the best that you can do.

You will only get that if you are open to listening to people, if you are open to criticism, to advice and if you have a little bit of humility in your approach to this incredible responsibility that you have been handed by the people of Ontario to govern our affairs. As a citizen of the province of Ontario, I worry about my province, about my neighbourhood, my community, my family and my friends, the constituents that I represent and the province that I love.

If you can't find in your approach sufficient humility to recognize that not all wisdom rests with you and that there is a province of people who have hopes, dreams and aspirations, who come from different backgrounds, who bring different thoughts and ideas—and what is always best about our province is when we can harness all that energy and bring it together to produce a collective goal and a collective result.

1120

I hope you will think about that. I hope you will think about Mrs McLeod's response. Perhaps it's something you should take and play for your caucus at some point in time, and I say that genuinely. It's not a facetious comment. It seems to me that there is a lesson to be learned and to be taken from her comments, and if you do that, I think we'll all be better off. Thank you very much, Mr Chair.

The Chair: Thank you. There'll be no further—

Mr Terence H. Young (Halton Centre): On a point of privilege, Mr Chair: I believe it's inappropriate for a member to impute motives for somebody else moving their eyes in a committee hearing. I think the record should also show that Ms Lankin, despite accusing the government of not listening, was not in the room for most of Mr Clement's remarks.

Ms Lankin: That's not correct.

The Chair: I don't believe that's a point of privilege.

Mrs Caplan: I have a legitimate point of privilege, Mr Chair, and I have never been as angry or as emotional as I am now. I have just read an article that I think is a breach of privilege. The minister, who refused to come to this committee to stand accountable or to debate this bill, has said, "The opposition is making things up."

We have been proven right on every issue that we have raised a concern about. We were the ones who said this bill, in its initial form, raised serious concerns about privacy. The minister said—I won't say he said "crazy" then; he says it now. Then he said, "Don't worry, there's nothing in this bill that"—the privacy commissioner said the opposition is right to be concerned.

My privileges as a member are breached when the minister refuses to come to this committee and answer questions, yet in the media is prepared to say, "The opposition is making things up." That's untrue, that is unfair and that is unparliamentary language to call us "crazy." My privileges as a member are offended because he doesn't have the guts to come here and say that to my face.

The Chair: That's not a point of privilege as it relates to our discussion.

Mrs Caplan: That is a point of privilege. It's unparliamentary.

Mrs McLeod: Mr Chairman, if I may. I'm obviously not going to speak again, but I have to tell you, when the Minister of Health, who has not come to this committee, dares to say that what we have been doing here is all politics and rhetoric, you will understand why we are so angry and so frustrated here today.

The Chair: Shall Ms Lankin's motion carry?

Ayes

Caplan, Lankin, McLeod, Phillips, Silipo.

Nays

Carr, Clement, Ecker, Hardeman, Johns, Sampson, Tascona, Young.

The Chair: The motion is defeated.

Mr Silipo: Mr Chair, there being only about 35 minutes or so left before we move to the process that's envisioned at 1 o'clock, I would request unanimous consent for us to move to section 10 of schedule M of the bill, which is the section that deals with user fees.

I think it's important, particularly an amendment we have which would allow new municipal user fees to be applied only if approved by the minister and would allow citizens to challenge those user fees that they felt would be unjust before the OMB.

There are other amendments under that section which I know are important. There certainly is one from the government side. In light of the fact that we have not had a chance to debate those issues in detail, I'd ask for unanimous consent for us to move to that amendment, to amendment 264 at this point.

The Chair: Mr Silipo has asked for unanimous consent to move to another section of the bill. Do we have that consent? Agreed.

Mr Silipo: It's number 264, which is an amendment to section 10 of the bill. I move that subsection 220.1(9) of the Municipal Act, as set out in section 10 of schedule M to the bill, be struck out and the following substituted:

"Approval of user fees

"(9) A bylaw passed under this section that imposes fees or charges for users of services or activities provided or performed by or on behalf of a municipality or local board shall not come into force until it is approved by the minister.

"Application to OMB

"(9.1) An application may be made to the municipal board under clause 71(c) of the Ontario Municipal Board Act on the grounds that fees imposed by a bylaw described in subsection (9) are unfair or unjust."

The Chair: Since this is not the first proposed amendment to this particular section, we need unanimous approval to skip the previous amendments and move to this one. Do we have that approval?

Mrs Caplan: Do we have to deal with all the amendments that relate to this section?

The Chair: We either have to deal with them in order or have unanimous approval to jump to this one.

Mr Silipo: I thought that's what I asked for before, to go to this particular amendment.

The Chair: No. You had unanimous approval to go to this section.

Mr Silipo: I'd be quite happy, Mr Chair, if you wish, when we deal with this amendment, also to move back to some of the other amendments that are part of this.

The Chair: Unanimous approval to go to this particular amendment in this section?

Mr Silipo: There are two important points being made by this amendment. First, there will be an inordinate number and variety of user fees that municipalities will impose, either by will or because they will have very little choice in the matter by virtue of the 50% cuts being imposed upon them by this government over the next two years, and we think there has to be some ability for some sense to be brought to those, and for the political responsibility to continue to rest where we believe it needs to rest and where we believe it really is emanating, which is in the hands of the province, through the Minister of Municipal Affairs in this case.

Clearly, what is being contemplated out there is, in our view, way beyond what is acceptable. As I heard today and as we've been hearing throughout this process, municipalities are looking at putting on user fees for false alarms, user fees for cars that may catch on fire in a municipality, user fees for access to public libraries. We heard, interestingly enough, the mayor of Ottawa say to us that she didn't think there was any difference between imposing a user fee on borrowing a book at a public library and renting out a video. To her, that was just part and parcel of the same kind of approach. I find that quite disturbing.

Given that it is very clearly this government's actions that are freeing up this ability to municipalities to impose these kinds of user fees and many more, which I will not get into because of time, we think the political responsibility ought to continue to rest where it is emanating from, which is in the hands of the minister, to be able to disallow those user fees from among the many that will be particularly unpalatable. That's the first part of the amendment.

The second part is that we believe it is fundamental that this legislation allow individuals or groups within communities to appeal to the Ontario Municipal Board where municipalities, in their view, are applying user fees that are unfair or unjust. We think that process needs to be there and needs to continue in order to allow for some vehicle, in addition to the one proposed in terms of the minister's approval, whereby the kind of unfettered discretion being given to municipalities can somehow be tempered. Otherwise, we will find, and I say this to the government members with all sincerity, in the array of user fees being contemplated and that will likely unfold by passage of this bill, the kinds of changes that even the most fairminded member of the government will be surprised to see.

It will mean that those who are least able to pay will have to bear the brunt one more time of the cuts this government is bringing about. When you apply a user fee, even if you're talking about a \$1 or \$2 user fee to borrow a book, for example, or to use a skating rink or to do any number of that kind of things, it has an inordinate and unfair impact on those citizens in our communities who are least able to pay, because \$1 or \$2 coming out of the income or the pocket of a family with a

\$10,000 income or a \$20,000 income costs them a lot more than a \$1 or \$2 fee for someone who's making \$60,000, \$70,000, \$80,000. I haven't even mentioned all the user fees we've heard on the business side that would cause grave concerns to businesses and the way in which these are being contemplated by various municipalities.

1130

For all those reasons and many more which, as I said, I will refrain from going into because of the time, I really urge the government to take serious note of this amendment. We think it's important that at least some limitations be placed on this unfettered discretion they seem to be so intent on giving municipalities.

Mr Phillips: I think the motion has merit. We should recognize what the government is trying to do here, two or three things.

One pretty clearly is that this is part of the deal you've cut with AMO as payment for its silence. I guess it was the "Dear Ernie and Al" letter of November 1—which, by the way, should perhaps be filed, if I might request that; it's in the public domain now. There's no question. "We're cutting your grants in half. How do we keep you quiet?" AMO said, "Here's the wish list that we've had around AMO for 25 years," and you tried to get it all passed. You were caught in a couple of things so you had to change those, and probably AMO's mad about those things.

But make no mistake. Every municipality is now being forced—their backs are to the wall—to look at all sorts of new user fees. I don't think any of us could even comprehend the scope of the user fees that are coming, and I think some of them will be taxes. When Al Leach was caught with the famous—it's the first time I've ever actually seen it happen, where a minister called for his own resignation. He said, "I intend to resign"—none of us called for his resignation; he called on himself to resign—if he was wrong.

These are his amendments we've got proving he was wrong. It's a most extraordinary thing. The minister said: "This bill does not permit taxes. I guarantee it. If I'm wrong, I'm going to be so embarrassed I'll quit." Then we find these are his amendments we're dealing with now, from the Ministry of Municipal Affairs. He's got amendments here prohibiting gas taxes, income taxes, sales taxes and poll taxes at the municipal level. He went out and found the evidence he was looking for to make sure he had to resign. We never called for his resignation; it was him.

I believe the bill was written in a way to permit a gas tax. It was only when the government was caught that you closed that loophole. But there is all sorts of potential for creative user fees here. We've already heard from a city saying: "False alarm—we'll start charging a fee for that. Car fire—we'll start charging a fee for that. Poor children wanting to use the library—we'll charge a fee and find a corporate donor." Kingston has indicated that the police there will start safe-driving schools. We're looking at driving the price of a marriage licence and death certificate up. Virtually every municipality is looking at brand-new user fees.

Mike Harris will own these. These are going to be the Mike Harris user fees, make no mistake, because two

things happened. He went to the municipalities and said: "We're cutting your grants in half. How do we make it up to you?" They said, "Give us the right for all these new user fees." So all of you will own them. This motion at least gives some opportunity before they're implemented for the minister to say whether this is what he intended. Had he come here, we would have asked him that question. But he refuses to. I saw him on TV last night. He's got lots of time to go elsewhere, but no time to come here. I found that just another insult, to see him traipsing around trying to get his face on television when he won't come here to answer the questions.

Make no mistake: We are going to see new user fees like you've never seen before, and creative new user fees. Every one of them will be on Mike Harris's back because they will be a result of your cutting back on the transfer payments. This attempts to at least give the government one last look at them before they come in.

You can say, "Surely you trust municipalities." Sure you trust municipalities, but I want to know whether or not they are implementing what you want them to implement. I think there's some opportunity for new taxes. We asked the question at the start of clause-by-clause for a legal opinion on whether this permits new taxes, and we have not yet got that legal opinion. I hope we'll get it within the next half-hour on whether the licence provision provides for taxing provisions. This is a motion designed to allow the government to take a look at these things before they become institutionalized in Ontario.

The last thing I'll say is that we've got a whole new tax regime now in Ontario, a balkanized tax system across Ontario. When the rest of the world is heading towards open borders, you go from community to community right now and there will be dramatic differences in the way they raise revenues. Rather than simplifying things, the famous "cutting the red tape" and all those things, this is a recipe for absolute complexity. Make no mistake about that. For organizations that do business in many municipalities, it'll be like a nightmare trying to figure out, "What fee do I pay in what community and where?"

One of the challenges in the GTA right now is that you've got a hodgepodge of taxation. On the one hand, Al Leach is heading the operating room trying to fix that, the hodgepodge of taxation; at the very same time he's creating a hodgepodge of taxation in every single municipality in Ontario. It makes no sense to most sensible people.

I think the motion has merit, and even the municipalities may appreciate an opportunity for some sober second thought.

Mrs Caplan: I'm going to speak very briefly on this. I think it's a very supportable amendment. I believe this bill is all about the introduction of user fees and the concentration of power. But when it comes to user fees, I remember the Taxfighter. Remember him? That was Mike Harris, leader of the official opposition. He called himself the Taxfighter. In those days, do you know what he said? He said: "A copayment is a tax. A user fee is a tax." I want to know what the Taxfighter, Mike Harris in opposition, would be saying today if he were honest and

truthful. I want to know if he still believes that a user fee is a tax.

In the campaign he said: "Read my lips. No new taxes." I thought, and so did my constituents and so did all the people who voted for him, that meant no new user fees. The Common Sense Revolution has clearly said, "No new user fees," and they all know he said, "User fees are a tax." Therefore, "No new taxes and no new user fees," would assure them that he would never bring in a bill that had the provisions in it to allow new user fees, new taxes, in his own words. But that's exactly what Bill 26 does.

I'll tell you something. When it comes to, "No new user fees" throw away the Common Sense Revolution. When it comes to, "We're not going to hurt seniors and the disabled," rip up the Common Sense Revolution. When they say, "We're not going to introduce new user fees for health services," rip up the Common Sense Revolution. I'll tell you something: To Mike Harris the Taxfighter this bill is about new taxes called user fees. That's what this is, and if this amendment fails there won't even be any opportunity for any kind of public process to deal with the municipalities' new powers.

1140

We heard Al Leach stand up and say, "I'll resign if this bill will allow for poll taxes and gas taxes." Then we heard Hazel McCallion, mayor of Mississauga, come in and say that's exactly what this is going to do. Mel Lastman, mayor of my municipality: "I like Bill 26. It'll let me bring in a user fee and tax everything that moves."

How can all of you who ran on the Common Sense Revolution platform look yourselves in the mirror as you support this bill that does exactly the opposite of everything that you said you would do? How can you support Mike Harris the Taxfighter, who said, "User fees are new taxes by any other name"? Yes, Mel Lastman, Hazel McCallion and the mayors of the municipalities eagerly await your okay to bring in new user fees; headlines in the newspapers. Why? Because after promising stable funding, your cutting municipal transfer payments by over 40%. So they are faced with slashing needed and valuable services or finding new ways to pay for them.

I don't think the people of this province yet fully understand the sinister and cynical betrayal when Jim Wilson, the Health minister, can stand up and say, "Everything I said in opposition was simply pandering and posturing. Don't believe a word I ever said," is effectively what he's saying. You know what? Mike Harris, now Premier, the Taxfighter, obviously was pandering and posturing and saying anything that would help him get elected. It worked. But in the process, our democracy is diminished, because people know that they cannot trust, and they feel betrayed. You should all be ashamed of yourselves. Mike Harris, you should be ashamed of yourself. Jim Wilson, you should be ashamed of yourself.

I was elected and I have been elected and I've run in elections and I have always, always tried to do what I said I would do. I said the same thing before the election and after the election, whether I was elected to opposition or to government. To cynically say that a user fee is not a tax is an outright lie. You're lying to people when you

say a user fee is not a tax. You're lying to them when you say that a copayment isn't a user fee. You're lying to them when you say you're a taxfighter when you allow new taxes called user fees.

Interjection: Come on.

Mrs Caplan: I'm going to support this amendment and, yes, "Come on." Come on, you don't like to hear it because it's the truth.

The Chair: I don't particularly appreciate that kind of language.

Mrs Caplan: I'm sure you don't. I don't appreciate Bill 26. I don't appreciate the fact that we don't have time to deal substantively with the amendments that have been brought forward and that so many issues are outstanding. We've asked for an additional week, and I don't appreciate the fact that they will not even ask the House leaders to consider additional time. I don't appreciate that either, Mr Chairman.

The Chair: As a parliamentarian who's been here for many years, could I ask you please to withdraw those last few comments?

Mrs Caplan: If I said anything that you consider unparliamentary, I withdraw them. But I told the truth.

The Chair: Thank you.

Mrs Ecker: Nice qualifier.

Mr Ernie Hardeman (Oxford): I just want to point out that I will not be speaking to the general intent of the whole Bill 26; I will speak to the amendment as put forward. I would advise the committee the government will not be supporting the amendment. The intent of the provision in the bill is to allow flexibility to municipal government to put charges and fees in place where they'd be most appropriate on behalf of the residents they are providing the services for. We believe that the local elected officials are closest to the people and are more accountable to those people.

We had many delegations before us in the hearing process that suggested that the most accountable politicians are the ones closest to the people.

I would point out in this resolution the recommendation is that the user fees would all have to go to the minister for approval. The majority of user fees contemplated or available to municipalities are presently available. There is a list of numerous user fees that municipalities can presently charge. This resolution would require the municipalities to, from this day forward, any time they were to implement a new user fee, have to go to the minister for such approval. That would, in the government's opinion, be going in the opposite direction that we hope this bill will take us, which is to further local autonomy.

I think we'll just point out some of the user fees that have been discussed many times during the committee hearings; one that comes to mind is the user fee for garbage collection. I want to point out that I come from a municipality where we have had user fees for total garbage collection and disposal. It has worked rather well. The ability to do that has always been there. This amendment would require that other municipalities in the future which wish to implement such a charge would have to go to the minister for such approval. The other problem that the government would see with such an

amendment as this is that it would not reduce the amount of government; in fact, it would then require two levels of government to make a decision on every bylaw that requires user fees, and we do not deem that appropriate.

Last but not least, the bottom of the second section of the amendment deals with putting in going to the OMB for appeals. I would point out that the section that speaks of that is only appeals on user fees to the public utilities commission and would not deal with the others. Present user fees are not appealable to the Ontario Municipal Board; we do not feel it appropriate to introduce further backlogs at the Ontario Municipal Board. We believe that the local autonomy and the decision of the local politicians and the decision of the local electorate at election time will cover off the appeal process for user fees as they're being applied. So we will not be supporting this amendment.

Mrs McLeod: Because of the ludicrousness of the process we're involved in, I want to point out that we're now dealing with an amendment that follows a rather significant amendment that has been proposed by the government and I assume that the government members have been directed to support, which is one that deals with this section of the act but makes it absolutely clear, then, that no bylaw that's imposed under this section can impose a poll tax or a similar fee or charge etc. In other words, municipalities, lo and behold, cannot use this, as they could have in Bill 26 if it had been passed into law by December 14, to impose a gas tax or a poll tax or a sales tax or an income tax. So I think it's important that this clarification get made, because that's one of the details that the government will not get a chance to explain to the public, that they have fixed that glaring error in Bill 26.

Having said that, I know there will be few opportunities to highlight the changes the government has made, and I wanted to highlight that one. I'm not surprised that they will not agree with this particular amendment because, as our colleagues have said, the strategy here was to take the millions and millions of dollars away from the municipalities to fund the income tax cut for the most well-to-do in our province and then to say, "How can we let the municipalities cope with that? Well, we'll give them scope, some flexibility," as the minister likes to describe it, and, lo and behold, the scope and flexibility takes the form of being able to raise new fees, by any other name new taxes, because as Mike Harris has said, and I'm happy to repeat it, a user fee is a tax by any other name.

I think the government is basically saying: "There won't be a problem here. We're the taxfighters all right, but as long as we don't do it there's not going to be any problem. The public isn't going to think it's us that did it. As long as somebody else gets the blame, we don't need to worry about whether or not there's a host of new user fees or a host of new taxes. Referendum on new taxes? Don't need to worry about that; that was only for new taxes that we impose directly. So if the municipalities bring them in and we give the municipalities the ability to bring them in, we still don't need a referendum, because that was only for the taxes that we introduce."

So the bottom line is that when people look to see what they got from their income tax cut, if we ever see the income tax cut, they're going to find that it was long ago eaten up by all the new user fees, taxes by any other name, that this government has made possible or has introduced. The only saving grace for the government is that they'll be able to blame it all on somebody else.

1150

Mr Silipo: I wanted to pursue the point that the parliamentary assistant made on the overall logic of why the government finds this amendment unacceptable. Perhaps I'll ask Mr Hardeman to just expand a little bit more, because I find it puzzling that the rationale that he would give for not supporting this amendment is because they want to give unfettered discretion to the municipalities and this limits that discretion.

They have had no hesitation in other parts of this same bill, in fact I think just two sections prior to this where they describe the regulatory powers of the minister, in saying that the minister retains the power to, by regulations, sever or fetter, in effect, the discretion that's being given to municipalities. So how can they try to have it both ways in terms of saying that it's okay in some areas to have the minister still retain the ultimate power, but here where we're going to see the largest example of discretion being exercised by municipalities as far as imposing any number of user fees, which is really another name, as has been said, for taxes, that the minister would just simply wash his hands and say, "I'm not prepared to have any responsibility," when we all know that the political responsibility really rests there?

Secondly, I wasn't clear on what the objection was to the OMB, whether Mr Hardeman was saying that it's the way in which this is worded because it limits it to only public utilities, because certainly our intention is not that, and if there's been maybe an error in the subsection referred to there, if that's what's holding the government from supporting it, presumably that's something we could come to agreement on. So I'd ask Mr Hardeman to just expand a bit more, because I find the rationale a bit puzzling.

Mr Hardeman: The question as to the minister's approval, we see this just as a situation where we create a lot of bureaucracy, and need for all bylaws to be approved by the minister as opposed to the local autonomy, we believe that the local elected officials should make the decision.

The act does still provide the protection that if in the opinion of the minister a general user fee was not appropriate and was being inappropriately done, there is an opportunity for the minister, by regulation, to correct such a situation. So we do not deem it appropriate that each bylaw should have to be approved by the minister, that two levels of government have to make a decision whether the bylaw to allow the paying for the collection of garbage through a user fee is an appropriate method in a certain municipality. So we do not support that the minister should have to approve each bylaw.

The issue of the appeal to the Ontario Municipal Board, I think it's important to point out that the present user fees that the municipalities implement are not appealable to the Ontario Municipal Board, only those

that are being applied through the public utilities commission. We do not deem it appropriate as a government to increase the workload of the Ontario Municipal Board to have all user fees be appealable at the Ontario Municipal Board. We do believe that the appeal process for when municipalities decide to implement inappropriate user fees—that they will be judged on that.

Mr Silipo: Again, to try to make the point perhaps another way, I find it really difficult to understand why it is that in some areas, for example in the area of sections dealing with the imposition of tolls, the minister clearly retains discretion to intervene where he thinks that municipalities are acting inappropriately. Here, the parliamentary assistant is saying to us: "We don't want the minister to intervene. We want the responsibility to be the local municipality's."

I just say again to the parliamentary assistant: How can you have it both ways? How can you say that in some cases you're going to have the minister decide to intervene and disallow certain actions by municipalities, whether it's in those sections or in many others—and again, if time allowed, we'd go through and list for you all the different areas where you're putting in here the ultimate power still being retained by the minister, certainly in the restructuring and many of the other provisions, and yet here you're saying, "No, this is one we don't want to touch."

Is it because you want to basically say here that you want to try to paint it as if it's the municipalities that are responsible for raising taxes rather than the province? What happened to the concept of one taxpayer, Mr Hardeman? What happened to the concept that your leader espoused so loudly before the election and during the election that there would be one taxpayer only? "There is only one taxpayer, and we would not take any actions," you said, "that would increase taxes." Well, what do you think this is doing?

You're cutting funding to municipalities by 50% and now you're saying to municipalities, "But you can go ahead and raise taxes. We'll reduce provincial taxes by 30%, which will benefit the richest citizens in the province, but you can go on and raise taxes that will hurt Ontarians of average and low incomes." That's what you're saying. And you're saying: "We want to wash our hands of that responsibility. We don't want the minister to be touched by that at all, so the minister can say, 'It's not our responsibility; it's that municipality that's doing it,' or 'It's that local board that's doing it,'" when we all know full well that the reason those municipalities and those boards will be imposing those fees, will be imposing those taxes, is not because they really want to do it—in some cases they probably do and they're just yearning to get this power that you're giving to them—but in most cases, I suggest to you, it's because you've left them no other choice. And you're not prepared to take the political responsibility for it, except of course where you think it might benefit you politically to have the minister intervene.

Explain to me the logic of that. Why not have at least the courage to say: "Yup, that's what we're doing. We're just passing on to the municipality this responsibility

because it's quite frankly too hot for us to handle"? Because that's what you're doing.

Mr Hardeman: It's obvious that the member does not agree with the principle of what we're doing, and we have a difference of opinion on that.

I would point out that the ability to charge user fees—and in fact it's a lengthy list of situations—is there. There is no appeal process for that. There is no need for the municipality to apply to the minister for approval of a bylaw to impose those user fees that are presently allowed. This section will allow a much broader variety of uses that municipalities can look at, on which they can charge a fee for the service they provide to constituents.

I would point out that the other option of course, in a number of cases, will be that they will not be providing certain services. They are going to be rationalizing the services that municipalities are providing. They're going to be rationalizing the structure of their government. They're going to be looking for economies to reduce the cost of government on the taxpayer.

When they're doing that, I think they also should be provided with the flexibility to look at all the services they're providing and to be able to recoup the cost in the most appropriate manner that they see fit. Now, the areas in one part of the province may be different than in other parts of the province as to how they deem the most appropriate way.

Again, I would use the analysis of the user fee for garbage collection. We had numerous presentations made to the committee that used that example as the most outrageous way of collecting fees. There are areas of the province that are presently doing that that deem that as the most appropriate way to collect the fees for service.

As the government, we do not see the minister in a better position to make that decision between which fee they want to charge and which they do not want to charge in that particular locality. We are convinced that it should be the local politicians given the local autonomy and be responsible to the local electorate at election time as to whether they made the right decision.

The Chair: It is 12 o'clock. Is it the committee's wish that we vote on this particular amendment? Okay.

Ayes

Caplan, Lankin, McLeod, Phillips, Silipo.

Nays

Carr, Clement, Ecker, Hardeman, Johns, Sampson, Tascona, Young.

The Chair: The amendment does not carry.
We'll recess until 1 o'clock.

Mr Silipo: Mr Chair, on a point of order before you recess, and again, I know it can only be done with unanimous agreement: We, as you know, when we come back from the lunch recess, will be basically forced into going through the remaining amendments without debate and simply voting on them. I wonder if there would be agreement for us to continue sitting during the next hour and at least have some debate on whatever other amendments we can get done. I appreciate that may cause some problems for the staff, but hopefully some arrangements

could be made as far as the committee members are concerned. I'm sure, given that there are a number of us here from both sides, we could spell each other off, if need be, in terms of giving people an opportunity to get a sandwich and still allow for some debate to continue over the next hour.

1200

Mrs Caplan: Good idea.

Interjection: Agreed.

Mr Clement: Mr Chairman, no disagreement in principle; you as the Chair have a long day ahead of you, as well as we do. I want to allow you some time to recharge your batteries.

The Chair: Mr Clement, Mr Silipo has asked for unanimous consent. The committee has the right to instruct me as the Chair in whatever way it wants, so it is the committee's call.

Interjections: Agreed.

Mr Clement: We agree.

The Chair: Agreed. Okay. The next amendment we will deal with is 264A.

Mr Silipo: Where are we going, Mr Chair?

The Chair: We've gone to this point, so we keep going. In the absence of any other direction from the committee, we keep going.

Mr Silipo: My understanding was that we had agreed to deal with the other pieces under section 10, and I think there was reference by Mrs McLeod to the motion that appears previous to this, which is the government motion limiting the taxation powers, if we could deal with that, and then we could decide after that's done what other parts of the bill we maybe could move to.

Mrs Caplan: Agreed.

The Chair: Okay.

Ms Lankin: The one before 264, we don't have a number on it, so we don't know if it's 263 or 263B.

Mr Silipo: It's the changes to section 220.1.

Interjection: It's 262.

Mrs McLeod: It's the one that I read into the record.

Mr Silipo: The one that Mrs McLeod referred to that restricts the application of poll taxes and income taxes, the government amendment.

Interjection: Page 262, government motion.

Mr Silipo: I'm sure the parliamentary assistant knows this one in his sleep.

The Chair: Do we have unanimous approval to jump to page 262?

Mr Clement: Before I give unanimous consent, Mr Chair, I'd like to have some direction from Mr Silipo, Mrs McLeod or whomever else what the game plan is. You wanted the extra hour. We're perfectly willing to give that to you. Could we just establish an order so we can do this in a reasonable way?

Mr Silipo: Certainly. I appreciate the question. Mr Chair, it would be my suggestion that, after we deal with this next amendment that we're suggesting, we try to move to a couple of other schedules of the bill, at least to allow us as quickly as possible to put either some amendments or some issues on the table. We would want go on to move, for example, briefly to schedule L, which deals with the pensions; we'd want to move briefly, if possible, to the schedule that deals with pay equity; and

if time allows, to go on to a couple of other sections following that. I appreciate that this is not the most desirable way to do this, but at least it's trying to make the best use we can of the remaining time.

Mr Phillips: I think in fairness, perhaps we can deal with this one and then perhaps the best way to do it is to alternate between the two parties.

Mr Silipo: Absolutely.

Mrs Caplan: That's fair.

Ms Lankin: It's a good idea.

Mr Phillips: I think we are very interested in debate on schedule Q, which is the arbitration.

The Chair: I need some direction here, folks.

Mr Clement: If you're going to alternate, it should be alternating between the three parties. There may be amendments that we would like to have some debate on as well. So Mr Silipo gets first pick, then Mr Phillips and then Mr Sampson or whoever on our side.

Mr Phillips: That's fine.

The Chair: So do we have all-party approval?

Ms Lankin: We'll certainly agree to that, but given that you've had it your own way all the way through this, Tony, I would think that you would give the last hour to the opposition.

Mr Silipo: You could give us at least an hour.

Mr Clement: I'm giving you two thirds of an hour. How's that?

Mr Phillips: Just so we get to it, we'd like to move, after this one, to—

The Chair: I would hate to think that I'm giving up my lunch period while we argue to decide what we're going to talk about.

Mr Phillips: Mr Chair, we could begin with the one that's before us and then we would like 342, which is an amendment on schedule Q.

The Chair: So we're at 262. That's the government amendment.

Mr Clement: We agree.

The Chair: Okay. Mr Hardeman, are you going to move the amendment at page 262?

Mr Hardeman: I move that section 220.1 of the Municipal Act, as set out in section 10 of schedule M to the bill, be amended by adding the following subsections:

"Restriction, poll tax

"(2.1) No bylaw under this section shall impose a poll tax or similar fee or charge, including a fee or charge which is imposed on an individual by reason only of his or her presence or residence in the municipality or part of it.

"Same, other matters

"(2.2) No bylaw under this section shall impose a fee or charge that is based on, is in respect of or is computed by reference to,

"(a) the income of a person, however it is earned or received, except that a municipality or local board may exempt, in whole or in part, any class of persons from all or part of a fee or charge on the basis of inability to pay;

"(b) the use, purchase or consumption by a person of property other than property belonging to or under the control of the municipality or local board that passes the bylaw;

"(c) the use, consumption or purchase by a person of a service other than a service provided or performed by or on behalf of or paid for by the municipality or local board that passes the bylaw;

"(d) the benefit received by a person from a service other than a service provided or performed by or on behalf of or paid for by the municipality or local board that passes the bylaw; or

"(e) the generation, exploitation, extraction, harvesting, processing, renewal or transportation of natural resources."

"Same, electrical power

"(2.3) Nothing in this section authorizes a municipality or local board to impose a fee or charge for supplying electrical power, including electrical energy, which exceeds the amount for the supply permitted by Ontario Hydro."

The Chair: Thank you, Mr Hardeman. Did you want to begin the discussion?

Mr Hardeman: As has been expressed a number of times, the issue of taxation, the user fee direction in Bill 26, there seemed to be some concern by members who came before the committee that there may be more taxation powers allowed in the act than were intended. The minister made it quite clear at the start of the hearings that it was not the intention of the government to allow poll taxes or gasoline taxes or income taxes. It is still the government's opinion that the original act does not allow that, but I think it's appropriate to clarify the situation to make sure that we do not have court challenges and disagreements from those who would read it the other way. So for clarification and for certainty for the municipalities and for the government, we think that the amendment is in order.

Mr Phillips: We heard in some jurisdictions that they felt the licensing provisions would give them the same right as the taxing provisions and that a municipality could make, for example, a licence provision for a gas station in the form of cents per litre. That's the licence fee. We were awaiting the legal opinion on that, but can you tell us if you've got that legal opinion now and whether that's possible under the licensing arrangement?

Mr Hardeman: I do not have a legal opinion to table. I was advised previously and I'm being advised at the present time that it is not the opinion of our legal staff that that would be a possibility.

Mr Phillips: Are you prepared to table a legal opinion that says the licensing provisions prohibit a licence fee in the form of, for a restaurant—a percentage—1% of sales; for a gas station, a litre? We've had the opposite legal opinion from some of the municipalities.

The reason I raise it is because my own view was that the bill originally was designed to permit a gas tax. It was found out that it did permit it, so you closed it in the fee area; but the way I read the licensing provision it's still there in all its glory. My point is that you've closed it in one place but it's still wide open in the other. I'm always suspicious when we haven't got the written legal opinion we thought we'd have at the start of this debate.

1210

Mr Hardeman: Again I would point out that we have a difference of opinion between Mr Phillips and myself.

I think when the hearing process started, the minister made it quite clear that it was not the intention of the bill to allow those taxes. He suggested it was not the intention of the bill to do that, and now we have changed that. The intention never was to allow income taxes or gasoline taxes.

The legal opinion, and again we're speaking to the amendment and not to amendments that may or that may not be elsewhere in the bill, that I would just express was given to me by Scott, sitting right next to me here, is that it's not a legally written opinion. It's the opinion of our legal staff that it is not allowed.

The ability of municipalities to gather the type of information, from a practical point of view, that would be required for that type of licensing does not exist in legislation. Municipalities do not have the ability to ask or to require of the private sector to tell them how much gas they are pumping or how many packages of cigarettes they sold or how many quarts of milk they have given or how many people have gone through their door to have a meal. So the practicality of it is also very difficult, but we do not believe that the ability for them to charge an ongoing fee for licensing, based on consumption, is a possibility.

Mr Phillips: I'd just say, Mr Chair, that when we began debating this bill, many of us thought it permitted a poll tax, a gas tax, municipal sales tax; we were told it didn't. We now know that it did, and so you tried to close that loophole. I will just say that I have very little confidence, and when you refuse to give a written opinion, even less confidence. When municipalities have looked at the bill and told us that in their opinion it does permit it, one can only be very suspicious about it.

I will not be at all surprised if we see licences, and the reason I raise it is because if you say you don't want a gas tax, I cannot understand why you haven't written the same provision in the licensing area. I believe the municipalities have told us they think the licensing provisions give them that opportunity.

Another question is—this prohibits poll tax, I gather—does it prohibit all municipal sales tax, all municipal income tax, all municipal consumption taxes? What taxes does it permit?

Mr Hardeman: On behalf of municipalities, the only taxation power they have presently is property taxation, and this does not change the ability to charge other taxes. The problem with saying what new ability to tax does this bill grant is, of course, that the end result of collecting money, as has been expressed at this committee many times, the revenue derived by municipalities, is considered a tax.

If municipalities require to collect a user fee through the taxing process, that same user fee would then be a tax because it would be collected in a like manner as tax. This bill does not create new taxation powers other than increases in the numbers of instances that user fees can be applied and the broadening of the licensing powers.

Mr Phillips: What I'm trying to get at is, because we kind of have to search around in the dark to find these things because I haven't found the government to be very helpful on this: This prohibits what taxes? What taxes does this prohibit?

Mr Hardeman: I'm not sure.

Mr Phillips: It's designed to prohibit some taxes. I'm just trying to figure out what taxes it prohibits.

Mr Hardeman: The amendment we're discussing is not to prohibit taxes. As we heard delegations, some would infer that these taxes were being allowed. This is to clarify that they are not allowed. The intention of the bill never was to allow further taxation powers, but to allow local autonomy in user fees and licensing powers.

Mr Phillips: I think what you just said was, "This prohibits them from imposing certain taxes." What taxes does it prohibit them from imposing?

Mr Hardeman: It clarifies that they cannot charge income taxes, sales taxes, poll taxes or any consumption taxes on gasoline or other products.

Mr Phillips: Okay. So what taxes does it then permit?

Mr Hardeman: Again, as I said, this amendment does not discuss a broad array of increasing taxing powers; it does not allow municipalities to implement taxes. This is to clarify which form of user fees could not be used.

Mr Phillips: This is not making sense to me. You've opened up opportunities for brand-new taxes. You've opened up a whole new area of new taxes, to use your definition. The heat came on a few taxes, so you've closed off one end of it, I gather: poll taxes, gas tax, municipal sales tax, municipal income tax. I'm just trying to figure out which ones are still permitted, because I gather that if you have not excluded it, you permit it.

Mr Hardeman: No. The original bill was written to allow a broad range of user fees and licensing fees.

Mr Phillips: You called them taxes, though.

Mr Hardeman: I guess the reason we don't understand one another is because you're getting the next question ready instead of listening to the answer of the previous one.

Mr Phillips: That's nonsense, with all due respect.

Mr Hardeman: The original bill allows a broad range of user fees and licensing powers. During the committee debate and the committee hearings we had many situation where people came forward with the same opinion as you have, that the user fees section of the bill allowed more than the government's intention, that it was being interpreted to mean that gas taxes could be applied, that some form of consumption taxes could be applied. To clarify that, to be sure that was not the intention of the government and it should not be presumed the ability of municipalities in the future, we have put forward this amendment to clarify that, that when this bill is approved, municipalities do not go away thinking they can apply income taxes, consumption taxes or gasoline taxes. There is nothing in this bill that puts more taxation powers to municipalities other than the area of user fees for municipal services and the use of municipal property, and licensing fees.

Mr Phillips: I'll try once more. You've opened up a whole new section for municipalities to issue user fees. It wasn't I who said "taxes"; you under instructions from counsel said "user fees, taxes." You opened it all up. You now have said, "We're sorry but we are going to define five taxes that you can't have." I can only assume that when you define those five they can't have, they can have everything else. Am I right or wrong?

Mr Hardeman: The act, as it read originally for Bill 26, was to give broad powers or broad local autonomy to charge user fees for municipal services, for the use of municipal properties. It also has a section further in the bill that deals with broader licensing powers and recovering costs for licensing. Many people came forward and said they would see user fees to be able to be applied in such a way that municipalities could get gas taxes or income taxes based on consumption. The minister had said when the bill was introduced that his intention was not to allow that type of user fee to be charged. In order to avoid further confrontation and misinterpretation, to have municipalities believing that they could, implementing that type of user fee, and then having to be told that that's not allowed, it was deemed appropriate to put forward an amendment that would clarify those areas that had been put to the government that were in doubt as to what municipalities thought they would be allowed to do. This amendment clarifies that situation so it is user fees that they can charge, not gas tax, income tax or consumption tax.

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Mr Phillips: I have one last question. Would this permit, for example, a land transfer tax?

Mr Hardeman: I would suggest that, no, it will not. This is not a taxation section. It is a user fee and it has to be for a service provided by the municipality. Land transfers are not done by municipalities.

Mr Phillips: Does counsel agree with that?

Mr Scott Gray: Scott Gray, Municipal Affairs. Our general approach on many of these things as we've gone through this process is it's a general power for a municipality to charge user fees for any municipal service. People raise examples of things that they have the power to impose the fee, but can they make it effective, can they acquire the information they need, can they enforce it? The same issue has come up about toll roads; it's come up about income tax. In each case you're going to have to look at the practicalities: Who are they trying to tax and do they have the ability to tax them?

Mr Phillips: What about land transfer tax?

Mr Gray: Once again it's an area you'd have to look into. On the toll road situation for example, our view of it is in probability they don't have the authority to prevent people from using roads if they don't pay the fee. So how effective is a charge for people using the road if you can't refuse to let them use the road if they don't pay the fee? Each one of these we've gone into, the same kinds of issues arise. There are many variations of what municipal charges could make, the way they would be structured, the kinds of groups of people and things they'd try to get at.

The way the bill was originally structured was it was a broad user fee power, to the extent that it starts to interfere with provincial interests. If it starts to mimic provincial income tax or if they find some way of getting at that kind of issue, that the regulation be there to make sure they don't have a way of getting at it. But from a practical point of view, each time one of these taxes has come up, it doesn't seem like they have the ability to impose that kind of tax.

Mr Phillips: Even though you said the other day the toll roads is clear: They do and they can.

Mr Hardeman: To answer the question directly on the land transfer tax, clause (b) of the amendment reads we cannot pass a bylaw—" (b) the use, purchase or consumption by a person of property other than property belonging to and under the control of the municipality or local board that passes the bylaw." So that would directly prohibit land transfer tax.

Mr Phillips: That's from counsel, is it? That's counsel's opinion?

Mr Hardeman: No, that's the amendment we're discussing.

Mr Phillips: But that's counsel's opinion, that it doesn't permit a land transfer tax?

Mr Gray: You can't tax by reference to the purchase of property. I would say that covers land transfer tax.

The Acting Chair (Mr Gary Carr): On the list, I have Mr Silipo next.

Mr Silipo: I just have to say that listening to that last exchange adds to my worries. That's actually one area where I thought this amendment was making it clear, but if it took two or three back-and-forths to get a clear answer to that one, it worries me that there may be other areas that are a little bit more nebulous.

I have said, and I think Mr Sampson may remember, that certainly I agree with the thrust of these amendments. We will support these amendments, and I'll explain in more detail why in a minute. But I have one remaining concern. I am not convinced that these amendments prevent municipalities from levying a gas tax. I'll tell you why, and I'd appreciate a comment from either Mr Hardeman or counsel on this.

I try very much as I look at these not to look at them as a lawyer, because I think that muddies things when a legislator tries to do that, a legislator who also is a lawyer. But I would have thought that some description other than "property" or "service" would have been necessary in order to pick up gas, and a tax on gas, which I would think is more appropriately defined as "goods" rather than either a "service" or "property." There may even be a better word than "goods" that can be used. I would be curious to know how in other legislation—because there must be other legislation both provincially and federally that deals with things like gas taxes—that is referred to. Is it referred to as property? Is it referred to as service? Because maybe my concern can be alleviated that way.

While I understand the intent of the government saying, "We want to exclude the possibility of municipalities applying, among other things, gas taxes," I just worry that you haven't plugged the hole yet on that one.

Mr Hardeman: I think the government is of the opinion that "property" is everything that's being bought and sold, if it's not a service, and we feel putting the word "gasoline" in independently would imply that other things would be allowed. All property that doesn't belong to a municipality cannot be taxed.

Mr Silipo: I'm not suggesting the word "gasoline." That's not what I'm saying. I'm suggesting there are more generic words such as "goods" which certainly

apply. We know in the federal legislation there's a sales tax—

Mr Hardeman: I'd be prepared to let the legal staff answer that.

Mr Silipo: I'm just puzzled that we're trying to encompass under "property" something like gasoline.

Mr Gray: I think in our mind "property" is a much broader term than "goods." I think most people, in their minds generically—few think of a litre of gas, liquid sitting in a container, as goods. It has a narrower sense. "Property" certainly covers real property, personal property—it's a very broad term, and in our view covers anything that would be covered by the word "goods."

Mr Silipo: I really hope you're right on that and that we're not going to find ourselves down the line with somebody interested in challenging that by applying in effect a gas tax and us getting into a whole legal wrangle about whether it's possible or not.

Just to step back from that and deal with the amendment as a whole, as I said, I'll be supporting this amendment because it does help to clarify at least that some taxes are not to be allowed.

I just have to note that I find the approach taken by the government in this one to be quite demonstrative of the whole approach they've taken on this whole bill. From the very beginning we saw the Minister of Municipal Affairs go to great lengths to defend this legislation and deny that there was any power here given to municipalities to tax. Time after time in the Legislature and in front of this committee he said, "No, this does not allow the power to tax."

Despite the parliamentary assistant's best efforts to say, "This is just clarifying, not changing the intent," I think we all know that what happened between the time this legislation was put forward and today, or the time this amendment was tabled, is that the government came to realize that they were creating, at the very least, some confusion out there. But I think they realized they were in fact creating a situation in which municipalities not only were given the right under the original drafting of the legislation to impose a variety of taxes, but that some municipalities were actually about to use those powers. We heard from mayor after mayor who appeared in front of this committee saying they would be interested in those taxes. We heard from the mayor of Mississauga about her interest in the gas tax. We heard from others in terms of other taxes. I think the government realizes that they would be in a pretty embarrassing situation of having to deal with some municipalities imposing taxes and then them having to deal with whether they were going to allow those or not. Either way, they would be contradicting themselves.

I think it's been at least sensible that they've seen the error of their ways and brought us this amendment. It would have been far more appropriate for the minister from the very beginning to say, if the intent is not to levy these taxes, "We're prepared to amend the legislation to clear up any ambiguities," rather than to go through the façade of saying, "No, no, no, there's no need to make changes." Lo and behold, there was a need to make changes, which they themselves then recognized and came forward.

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I think again it speaks to the question of competence. It speaks to the issue of, does this government know what it's doing? Beyond all of the problems that they are causing, beyond all of the pain that they are imposing on the people of Ontario, I think we are also seeing them bungling and muddling through this major piece of legislation. It once again just makes the point about how crazy and inappropriate this whole process has been on some major changes, such as the ones that we're debating in front of us.

Mrs Caplan: For me the biggest concern I have is the process that we've undertaken and the way that we are attempting to discuss these. I am concerned not only about what is said but what's not said, what's undefined, and the lack of clarity in the answers coming from the ministry as to the effect of this.

I would just reference an article by that liberal newspaper, the *Globe and Mail*, and its most liberal of columnists, Terence Corcoran, who refers to "user fee madness." I found when I read this that it was all of the things we've said we're concerned about with this bill, and as a former municipal councillor I just think that people should be very concerned about the fact that they will be paying for more and receiving less, all in the name of generating a provincial income tax rate cut of 30%.

I think this government amendment as well is sufficient cause for the resignation of the minister. If you feel that you have to table this amendment in order to give assurance, clearly the concerns that were raised about whether or not Bill 26, as it stood, would permit all of those things that Minister Leach assured us it would not—he said very clearly in the House that if he was proven wrong, he would resign. I think he should resign, because this amendment says he was wrong. I have no questions, frankly. I wanted to just get on the record and make that statement, because I think this amendment is an admission that Minister Leach didn't know what he was talking about, that he was absolutely wrong, that the concerns that were raised about the imposition of new taxes and fees at the municipal level, gas taxes and poll taxes and head taxes and so forth, were all legitimate concerns. This amendment proves that, and I think the minister should resign—that is, if he has any integrity, he should resign.

Mr Sampson: I will obviously be supporting this amendment, although I'm not entirely convinced that it's necessary to be as explicit as is under this piece of legislation.

I do want to speak to the comment about other municipalities wanting to actively pursue this new avenue of revenue-raising that we are intending to grant to them. I remember—and my colleagues across the floor frequently referred to this comment and this deputant over the course of the hearings. We did hear from the mayor of Mississauga, who, in spite of continuing questioning from Mr Phillips, while she did support this particular bill—and I had to go back to Hansard to make sure of it, because I wanted to make sure that the residents of Mississauga weren't going to be terribly upset by her statement, but she did say that in spite of the cuts that she and her city were having to deal with, they were not

intending to use the user fee component of this particular legislation to balance those cuts.

She did make a comment with respect to gas tax, where she thought it would be interesting, as she deals with the transportation issues, as all the mayors will have to deal with the interbureau and intercity and interregion transportation issues as the GTA issue unfolds, but with respect to balancing her budget, she was not going to be using additional user fees to balance that. She gave a rather interesting scenario of how she attempted—without this legislation, by the way; in the current format, in her current authority—to apply a user fee. I think the situation was to a ball park for use by one of the local baseball teams.

There was a significant amount of debate and concern raised as a result of the process she had to go through to do that. She of course has to implement a bylaw, and the bylaw in the city of Mississauga, like it is everywhere else, is a fully open debate process. As a result of trying to implement that user fee, she was presented with a number of concerns and issues, saying, “We can’t pay it. But, Ms McCallion, what are you intending to use the money for?” “Well,” she said, “obviously to pay for the maintenance of the parks.” So the end result of that discussion was that instead of the groups paying for the use of the parks, they were prepared to ante up and help deliver some of the maintenance to the parks so that her objective was achieved and the objective of the people consuming the services was achieved, all without, by the way, I shall put to you, an additional user charge.

I do want to, though, hopefully clarify the issue that Mr Phillips still seems to be concerned about: Is there a potential to raise gas taxes through the licensing component? I do want to ask, Mr Chair, to Mr Hardeman, who I suspect will pass off to legal counsel, whether there is any particular meaning to the phrase “in the nature of,” and I’ll highlight, “a direct tax,” and whether that has any particular meaning with respect to the Tax Act and the authority of the province to tax and its authority to pass on to municipalities to tax.

Mr Hardeman: Yes, I think we will ask the legal branch to answer that after I’ve answered it so they can correct me. But the wording of the “direct tax” is there written in as opposed to an indirect tax. The province has the ability and the authority to collect taxes of a direct nature. The federal government collects taxes of an indirect nature. The province cannot allow a local government to have more powers or to have broader jurisdiction than the province itself possesses. So it’s put in there to make sure that everyone recognizes that only a direct tax or a direct revenue can be raised, the concern being that if someone was to put a process in place in a user fee situation that would be in the opinion of the courts an indirect tax, that would be considered inappropriate.

At that time, it is important from the provincial perspective that that would be an inappropriate action on behalf of the local municipality, not an inappropriate part of our bill that would then wipe out the other municipalities that had in good faith used this section of the bill. We would not want the courts to strike down the ability to put a user fee based on the inappropriateness of one municipality. So the definition of a “direct tax” or the

implication of a direct tax is there to make sure that everyone recognizes that it cannot be put in the nature of an indirect tax.

Mr Gray: I agree with that entirely. The whole reason for the word “direct” is simply to make sure that if a municipal user fee bylaw is challenged, the provincial power for user fees of many municipalities across the province wouldn’t potentially fall under a constitutional challenge at the same time.

Mr Sampson: Just so that I understand, an indirect tax is taxing somebody through some other mechanism or through some other transaction, is it not?

Mr Gray: In general terms, it’s a tax that’s passed through, passed on to somebody else. It isn’t the ultimate consumer who’s paying that tax.

Mr Sampson: Right. I think Mr Phillips’s concern was, all right, we’re allowing a municipality to perhaps license a gas station. But in the process of licensing the gas station, can it say your licence fee is a function of the number of litres you pump through your pump? I guess my answer to that is I don’t think it can be. He was concerned that perhaps we’d left that door open. I think Mr Silipo had the same concern.

My answer to that is, I would have thought it’s caught by, first of all, the “direct tax” phraseology in this section. Second, as I understand it, you can’t impose a licence fee post-transaction. You must establish a licence fee today. It has to be either \$1 or \$10 today. You can’t say, “All right, you were licensed last year, and this is your fee.” Can you maybe help me out with that?

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Mr Gray: I think on the licensing side the phrase there is “may be in the nature of a tax” in the current legislation. The motion the government is proposing has yet to be debated, but it would limit that to something akin to cost recovery. So the net result is that on the licensing side, whatever fee you can impose certainly cannot be a tax, cannot raise more than actual costs the municipality is incurring.

Mr Sampson: That’s, in my view, a third reason why you wouldn’t be able to, as Mr Phillips has been concerned, replicate a gas tax, if I may, through the licensing provision of this particular bill.

Mr Gray: Yes.

Mr Gilles Bisson (Cochrane South): I’ll come back to that one in a bit because I think that reopens the issue somewhat again.

Just to be quite clear here, what the government is saying—and just a yes or a no—is that you will allow the power to municipalities to charge a user fee on particular services. Basically, that’s what you’re doing here, right?

Mr Hardeman: The amendment we’re discussing is an amendment to define what type of taxation or type of user fee would not be acceptable. The original bill that this amendment deals with is the broad section of allowing a broad range of user fees for municipal services.

Mr Bisson: But what this bill provides for is the ability for a municipality to charge a user fee in the form of a direct tax for services provided by the municipality to its residents. That’s what this bill does, right? It gives the power to municipalities to charge more user fees than it does now, right?

Mr Hardeman: Yes.

Mr Bisson: I'm a bit of a history buff here, because I remember sitting in this Legislature from 1990 to 1995 when our government, the New Democratic government, made a move in order to be able to increase licensing fees charged by the provincial government—not by municipal governments or any other governments, but by the government itself—when it comes to getting everything from applications for different kinds of fees, permits, birth certificates etc. At that time the leader of the third party, who was Mr Harris—and Mr Carr, who is the Chair here right now, was a member of that opposition party—spoke vehemently in opposition to that.

In fact, what they said was that this was wrong-headed, that the government should not be charging any kind of additional licensing fee, any additional user fee, any additional tax, because that was in opposition to everything that they believed in as the Conservative Party of the day when it came to adding more money that the taxpayer had to pay. I guess the simple question I have is, what's happened? Why is it that three, four years ago, and up to even a year ago, the Conservative Party of Ontario was opposed to the provincial government or the municipal governments charging additional user fees and taxes, and upon taking government now you're giving the power to the municipality to increase user fees? I just wonder, what's changed, what's happened here? Is it a change in position?

Mr Hardeman: Prior to Bill 26, municipalities have a broad range of user fees that can be implemented. In fact, over on the desk I have a list that includes about three pages of items or things that can be charged for on behalf of municipalities for user fees. This bill takes that list and expands it or changes it to eliminate the list and say that municipalities are the elected officials closest to the people who are paying for the service and in fact whom the service is being provided for, and they should have the ability to make the decisions on which services they should be providing. They should also have the ability to make the decision on which services they should apply a user fee to, on behalf of their residents. So the change in the user fee section is to broaden the range and to give more local autonomy to the municipalities, which were elected to represent the people they represent.

Mr Bisson: But what you're telling me is that as a government, as the Harris government, what you're doing is giving the municipalities across Ontario the ability to charge new user fees, right? Yes or no?

Mr Hardeman: We're giving municipalities the ability to make decisions on which services they're presently providing they should provide a user fee for.

Mr Bisson: You don't want to be the bad guy, so you're saying to municipalities, "You can do this." In the long and the short of it, you're saying to municipalities, "You can charge new user fees." Yes or no? That's what the bill does, right?

Mr Hardeman: We're saying to municipalities, "You can charge user fees for services that you are providing." The need may very well be, for municipalities that presently have user fees on certain services, that they will take them off of those services and put them on others. I'm not suggesting that that's going to be a very prevalent action, but I think that's a possibility.

Mr Bisson: Will municipalities have the power under Bill 26 to charge new user fees?

Mrs Caplan: Yes.

Mr Hardeman: Yes.

Mr Bisson: Back three years ago, when the NDP government under Bob Rae increased licensing fees on the part of the government of Ontario through the services it provides through the registrar general's office, the Ministry of Natural Resources, the Ministry of Mines and others, the then leader of the third party, one Michael Harris, now Premier of this province, along with his entire caucus, stood in opposition to that principle that the NDP had put forward, which was an increase in licences to the people of this province whose service it provides as a government.

At that time Michael Harris, along with all of his Conservative members, said that's wrong, that the government shouldn't charge a tax, shouldn't charge new taxes and in fact a user fee was a tax. Right? Do you remember that? Was that the position of the Conservative Party three years ago?

Mr Hardeman: As you mentioned earlier, I was not one of those who was here.

Mr Bisson: I recognize that.

Mr Hardeman: As to actually remembering what was said, it is rather difficult. I would point out that the ability to raise money through user fees presently exists with municipalities.

Mr Bisson: That's right.

Mr Hardeman: The ability to raise all the money that is presently being discussed here would in fact—theoretically, the ability to raise that user fee is there now on the list of items that are there. The ability that is being provided in this is for municipalities to make the decision as to the most appropriate services that they want to put user fees on.

Mr Bisson: Let me ask you this real simple question: Would you say that the position put forward under Bill 26 in regard to powers for municipalities in charging user fees is somewhat different than the position the Conservative Party took in opposition three years ago?

Mr Hardeman: I'm afraid I can't answer that because obviously that's a judgement call. I can speak to the amendment that we're speaking to, and this does provide the ability of municipalities to decide where to charge user fees on their services.

Mr Bisson: A last point and I'll let this go; I think I've made the point. It goes on to say in some of your own documentation called the Common Sense Revolution:

"Historically, municipalities have responded to provincial funding limits by simply increasing local property taxes. There may be numerous levels of government in this province, but there is only one level of taxpayer—you."

The Conservative Party went on to say that they would make sure that no new taxes, and read my lips, this is what they said, no new taxes or user fees would be increased by this province, by their government or by municipalities as a result of their actions. Would you say that that commitment has now been broken?

Mr Hardeman: No. First of all, I would go back to the comment that was made earlier by Mr Sampson concerning the mayor of Mississauga. She appreciated the ability of municipalities to be able to look at the array of services that they are providing and where the most appropriate place was for user fees in that realm. She did not see the need to increase dramatically the user fees in the municipality in order to meet the reductions in payments. So, no, I do not agree with your statement.

Mrs McLeod: We're rapidly running out of time, and I think it's unfortunate that once again we can only really do one small part of the entire municipal section, because there is much more in the municipal section.

I find it fascinating that with all the discussion about flexibility and scope being given to the municipalities, as you look at the total number of parts of this bill that affect municipalities, the only one that really gives more flexibility is the one that gives them the flexibility to raise new user fees or taxes, as Mr Bisson and the rest of us have been stressing.

In many other areas of this bill, municipalities are going to be overseen by government in quite new ways, including the ability of government to set standards and hold municipalities accountable for meeting those standards.

I also suggest that as you cite evidence that has been given to this committee in hearings over the last three weeks that the mayor of Mississauga continues to be unique in many ways. I'm sure the citizens of Mississauga were reassured by fact that she was not going to raise user fees, but her presentation was somewhat unique and not typical of the presentations that you had from many other municipal representatives at this committee, which is why the amendment is before us and why, Mr Hardeman, you've indicated that the minister had to do something to clarify his intent.

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We will support it, obviously, but I have to tell you, we are nervous and we are going to be looking for continued answers. Mr Phillips's nervousness about whether or not you had successfully identified all the possible areas of taxation that municipalities might explore that you didn't intend them to explore, I think is quite justified, particularly when you and the minister—and you're accurately reflecting what we've heard from the minister—still say, "Well, we don't think the law really allows this, but the municipalities might think it allowed a gas tax or a poll or a sales tax, so just in case a municipality wants to do that, we'll put it in law that they can't do these five, and then we won't have to say no to them when they try and do it."

I guess the concern that we still have is, what did you think would happen if this had become law on December 14 or December 23, which was your government's very clear desire and intention; if it had become law and this amendment had never come forward and one of the other municipalities that was chomping at the bit to bring in a gas tax had put a gas tax in? Would you have thought that they would come to you, as the government, and you would say, "No, I'm sorry, municipality, you can't do a gas tax?" Do you have in this law now—did you have then and do you have now, even with this amendment—

the power to say no to a municipality that wants to put in place a user fee or a tax which was not, and I quote you, "the government's intention for them to use"? Are we going to see the government challenging municipalities in court?

Mr Hardeman: The two questions, what would have happened if this bill had passed—it would have not been as clear as to which user fees and how user fees could have been charged. It is the opinion of the government and the minister that the result would have been the same. This is an amendment to clarify, to make sure we do not end up with the challenges.

Mrs McLeod: I understand the intent of the government. I'm asking what power the government had then or has now to say no.

Mr Hardeman: At the end of the section there is the ability of the minister to, by regulation, regulate which user fees are appropriate and which ones are not appropriate. That was there prior and it's still there.

Mrs McLeod: So retroactively the government intends to say no to municipalities if they do something the government doesn't like.

Mr Hardeman: No. In the section of the user fees, it is not retroactive. It would have to be by regulation. By regulation, the minister can describe those user fees that would not be in the best interests of the provincial—

Mrs McLeod: So had this become law and a municipality had brought in a gas tax, as many were just waiting to do, that would have stayed in place, even if you had belatedly discovered you could do it and you regulated it not to be done?

Mr Hardeman: If you could repeat the question, Ms McLeod, because I—

Mrs McLeod: Mr Chairman and Mr Hardeman, I'll just let it stand. I know we had asked if we could move on to another section. We're just ultimately running out of time, so we're prepared to support the amendment. We can vote on it, hoping there might be just a little bit of time to touch on schedule Q.

Mr Silipo: Very briefly, because I agree, if we can find time to get to something else before the infamous 1 o'clock deadline strikes, I'd appreciate that. But I have to say to members of the government, I continue to worry about the comfort that they are taking in the words "direct tax," which remain in this part of the bill.

I just point out to them that they should take a look at the analysis that we were given by—and I apologize for not remembering the name, but there was an article written by a law professor who looked at this issue and he described very clearly that the words "direct tax," as I read it, meant in fact a whole array of taxes, income taxes etc, some of which clearly you are prohibiting through this amendment. But you're still creating a conflict, it seems to me, between saying you can't on the one hand apply these taxes and leaving in the section here that still has the words "direct tax," although I appreciate that you're taking that out of another subsection of the bill.

Again, it speaks to the problems that I think we're going to see coming out of this legislation, given the hurried way in which we are dealing with this and the

government's insistence on dealing with it in this kind of haphazard and hurried way.

The Chair: No further discussion on the amendment? Shall the government amendment on page 262 carry? All those in favour?

Opposed?

The amendment carries.

Whose was the next choice for the last three minutes?

Mrs McLeod: We had asked to move to the last schedule, skipping everything that comes in between where we were and the very end. This is the schedule, and I can read the summary. It's a very short schedule, but basically, as described in the bill, it amends the Fire Departments Act, the Hospital Labour Disputes Arbitration Act, the Police Services Act, the Public Service Act and the School Boards and Teachers Collective Negotiations Act to require arbitrators to consider specified criteria, including the employer's ability to pay.

Mr Chair, I would ask for your direction. We have not proposed amendments to this section. We believe that the entire section needs some debate and that's why we have moved to this section. Is it appropriate to debate then?

The Chair: Basically, Mrs McLeod, we have two minutes. So however you want to use the two minutes is your choice.

Mrs McLeod: I will speak then to our concerns with schedule Q. It's one of those things that the government might have thought would escape people's notice when it introduced it at the tail end of this omnibus bill that carries so many other issues along with it. But in fact, as people who've sat on the subcommittees will know, this is an issue that has been raised over and over again.

This particular schedule, to the best of our knowledge, is absolutely unprecedented, although it is possible that there was something similar to this that might have been brought in with wage control legislation when wages were being controlled. We believe that this is wage control by any other name because of the effect that this will have on collective bargaining.

If there were time I would cite from the firefighters, who made presentation after presentation expressing their outrage that the government, whose members had said repeatedly, from Mr Harris to Ms Witmer to Mr Runciman, that they would make no changes to the firefighters act without full consultation with the firefighters. I would share with you their outrage that this very fundamental change was made with no consultation at all.

I would also tell you that there was no consultation whatsoever with arbitrators, the very people who are expected to fulfil the requirements of this schedule; no consultation at all with arbitrators. All of the questions that this sets up remain. How does an arbitrator determine what is the "ability to pay"? Municipalities have said, "Just take our word for it." Is that the direction in this schedule? Are they expected then to look at the level of service that is delivered? Are arbitrators, independent of elected officials, now going to be the ones who decide what level of service will be provided, whether it's in firefighting or police services or collective bargaining or the public services of the government? Is that what "other criteria including the ability to pay" is going to mean?

I suggest, furthermore, that this very schedule shows such a blatant disregard for the collective bargaining process that it is absolutely breathtaking, and because we only have seconds, I can only say that I believe that to set aside collective bargaining rights of these groups in one fell swoop can only be seen as the clearest indication of government bad faith in wanting to deal with those who have won these collective bargaining rights over the years.

The Chair: As per the order from the House that we are operating under, it is now 1 o'clock, and:

"At 1 pm on January 26, 1996, those amendments which have not yet been moved shall be deemed to have been moved and the Chair of the committee shall interrupt the proceedings and shall, without further debate or amendment, put every question necessary to dispose of all remaining sections of the bill and any amendments thereto. Any divisions required shall be deferred until all remaining questions have been put and taken in succession with one 20-minute waiting period allowed pursuant to standing order 128(a)."

Mr Silipo: On a point of order, Mr Chairman: I just want to ask whether in fact it would make a difference to the government members in terms of proceeding with this to know that, as we speak, there is a peaceful occupation of the Premier's constituency office which is taking place by, it's interesting to note, a variety of citizens, including members of OPSEU, people from the environmental communities, a 75-year-old preacher and a number of other people, all of whom are concerned that the process we've followed has been far from adequate and all of whom are asking that more time be allowed for more debate and more discussion on this very important bill. I thought that might have some impact on—

1300

The Chair: Thank you, Mr Silipo. That is not a point of order.

The beginning place for this is schedule E, amendments to the Capital Investment Plan Act, 1993, and the Highway Traffic Act relating to highway tolls. We will deal with the amendments first. The first amendment is an NDP amendment to subsection 1(1).

Ms Lankin: Excuse me. What page are you on?

Mrs McLeod: Just give us a fighting chance to start at the right place, Mr Chair.

The Chair: Page 11.

Mrs McLeod: Page 11.

Mr Clement: Of the amendments.

Mrs McLeod: Oh. Thank you very much.

The Chair: All those in favour?

Ms Lankin: Just a second. I haven't even got to the page, Mr Chair. I know you're certainly anxious, but, you know—

Mr Silipo: Aren't you going to read this, Mr Chair?

The Chair: By virtue of the fact that they're deemed to have been moved, they're also deemed to have been read.

Mr Silipo: Okay. So you won't have to read them again—

Mrs Caplan: Now, when you say page 11, is that page 11 of the printed bill or page 11—

The Chair: Page 11 of the amendments.

Mrs McLeod: Mr Chairman, there are pages where the amendments have been renumbered, as you know, including at the nth hour. It is virtually impossible for anybody to have renumbered all of these pages, so if you could at least give us some indication of what we're dealing with, it would be helpful.

The Chair: As we go through, we will try to avoid any confusion.

Shall this NDP amendment carry?

Interjections.

The Chair: Are we requesting—

Mr Silipo: Recorded votes throughout. I think we can make the request once, Mr Chair, so we don't have to—

The Chair: Okay. We'll have to defer the vote on that till the end.

Mr Silipo: No.

Mrs Caplan: Why?

The Chair: The standing order. Any divisions requested have to be deferred to the end, which means that when we get through this process, we will then have to come back and redo them all.

Mrs McLeod: All right.

Mr Silipo: Well, that's interesting.

Mrs McLeod: Mr Chairman, what are the time lines for the committee? I'm curious to know.

The Chair: Pardon?

Mrs McLeod: In the time lines for the committee, then it must adjourn at 6 o'clock?

The Chair: No. This evening we stay until we finish.

Mrs McLeod: All right.

Mr Silipo: Mr Chair, what would it require for us to simply have recorded votes as we go along?

The Chair: According to the order on which we are operating—we cannot contravene it—any requested divisions have to be deferred until the end.

Mrs McLeod: Mr Chairman, I'm sorry, but what is the order that we're operating under other than the standing order of the committee?

The Chair: We're operating under the order from the House.

Mrs McLeod: That order specifies?

The Chair: Specifies very clearly, and I just read it.

Mrs Caplan: Unbelievable.

Mrs McLeod: So that was the fine print of the Finance minister's agreement?

The Chair: I don't know whose fine print it was, but it is—

Mrs Caplan: That effectively does not allow any—

Interjection.

The Chair: Excuse me. This is the standing order that everybody has been aware of from the beginning, and that is what we're obligated to operate under.

Mrs Janet Ecker (Durham West): Your House leader agreed.

Mrs Caplan: Oh, please. We never agreed to that standing order.

Mrs McLeod: This is ludicrous.

Mrs Caplan: We never agreed to that time allocation motion. We voted against it, Ms Ecker. Tell the truth, finally.

The Chair: Mrs Caplan.

Mrs Caplan: We never agreed to that crap.

Mrs McLeod: Mr Chairman, could you just agree to explain to anybody—

Mrs Caplan: I just can't stand it when you sit there and don't tell the truth.

Mrs McLeod: —exactly what is achieved by having the—

Mrs Caplan: We never agreed to that. Our House leader never agreed to that.

The Chair: I will again read the standing order that was passed in the Legislature under which we are obligated to perform:

"At 1 pm on January 26, 1996, those amendments which have not yet been moved shall be deemed to have been moved and the Chair of the committee shall interrupt the proceedings and shall, without further debate or amendment, put every question necessary to dispose of all remaining sections of the bill and any amendments thereto. Any divisions required shall be deferred until all remaining questions have been put and taken in succession with one 20-minute waiting period allowed pursuant to standing order 128(a)."

Mrs McLeod: Let's start and just routinely call the numbers from 1 to 359, Mr Chair.

The Chair: We cannot deviate from that order.

Mrs McLeod: Well, we're dividing on them all, so just read the numbers.

Mrs Caplan: Effectively you can't divide.

Ms Lankin: Mr Chair, the bizarre outcome of what's been a very, very bizarre process from day one, of that particular order that you've just read, is that if the opposition wants to have a recorded vote, wants to have recorded in Hansard the numbers and the individuals who voted on any given amendment—because there are some amendments that we will support that the government has put forward; I suspect, given the track record, there will be no amendments that the opposition's put forward that the government will support—if we want to have a Hansard-recorded vote, what you're saying is that we have to let you read 1 through 350, whatever amendments there are, in which we say we divide on each of them, and you defer each of them, and then we start at the beginning and we go all the way through and do recorded votes on them.

The Chair: You can choose specific ones. You can have an unrecorded vote on some and choose specific ones you would want to have a division on.

Ms Lankin: If it is in fact the opposition's desire, as is our right, as I think would be expected by people in this circumstance, given the importance of this and all that we have gone through, that we would have recorded votes, the result of your interpretation of the ruling is that we will have to go from 1 through 350 telling you that we want a recorded vote, and then go through 1 through 350. I suggest we won't even be done by midnight tonight if we proceed in that way.

So far, you've told us that we've deemed that they've all been moved and we've deemed that they've all been debated, we've deemed that they've all been read into the record. We're doing a lot of deeming, so let's deem one more time. Let's deem that they have all been read and divided on and deferred and now called back. Let's get

unanimous agreement to deem that they have all had a division requested on each one, deferred and now called back.

Mrs Caplan: Agreed.

The Chair: Unfortunately—

Mr Silipo: That we can do with agreement, Mr Chair.

The Chair: Basically, you people who have been here a long time know more about this than I do, but we are not allowed, as a committee, to deviate from the order of the House. If you require a recorded division on any of these particular amendments or sections, it is deferred till the end. We cannot change that.

Ms Lankin: To my point, Mr Chair, let me try one more time. I'll wait until you finish getting your advice.

Mrs McLeod: Mr Chair, if it makes you more comfortable, why not just say, "Carried? No. Division, put to the end"? That would only take a few moments, less time than it will take to consult.

Ms Lankin: Mr Chair, just before you continue your consultation, I had the floor. Could I try one more time to make a suggestion to you?

I respect the rules. Because I have chaired enough events over the course of the years—organizations, boards, Robert's Rules of Order, parliamentary rules of order—I also understand that the role of the Chair is to facilitate both the abiding to the rules and the wishes of the committee.

Let's not take the letter of the law to a point of absurdity. We have deemed a number of things. Let's deem that a division has been requested. We've deemed that all the amendments are put, that they've all been read in and that there will be no debate. Let's deem that all the amendments have been put to this committee and deem that a division has been requested on each one. That now brings you back to the point of going through them to take a recorded vote. I would hope that's a helpful suggestion.

The Chair: Is everybody in favour of—

Mrs Caplan: Agreed.

Mr Silipo: Yes.

The Chair: We now are obligated to take a recorded vote on every single amendment, every single—

Ms Lankin: That's right. I'm glad that when people actually take the time to listen to me, they find I can make some constructive suggestions. If you'd had one more week on the bill, I could have done miracles with Bill 26.

The Chair: All those in favour of the New Democratic amendment to schedule E, page 11?

Ayes

Caplan, Lankin, McLeod, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson.

The Chair: The amendment is defeated.

The next amendment is a Liberal amendment to subsection 1(1.1), page 11A.

Ayes

Caplan, Lankin, McLeod, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson.

1310

The Chair: The next motion is a Liberal motion to subsection 1(2).

Mr Maves: Mr Chair, just a quick point of order: Is it possible to do the same vote for some of these if consecutively—

The Chair: If that's the committee's wish.

Mr Maves: So it'll be a recorded vote but members opposite could say "Same vote" for themselves and we could say "Same vote."

Mrs McLeod: Assuming that it is. There actually may be some amendments we intend to support.

Mr Maves: There could be changes. That's right.

The Chair: Ms Lankin, on the same point of order?

Ms Lankin: It's a question, a procedural question. I think Mr Maves is trying to make a suggestion to facilitate the process and the timing of it and make it a little bit easier on the clerk so he doesn't have to read our names out every time. I'm not opposed to that, but I just wondered, in this world of deeming democracy, if we deemed that in fact every opposition motion was one in which the opposition members were voting in favour and the government members were voting against, and we deemed that every—it's a question—government motion that we've seen so far is one that the opposition members are going to vote against and the government members are going to vote in favour, does that mean we could deem that this process is over at this particular time of the day?

The Chair: I believe, if that is the wish of the committee, we could—

Interjections.

The Chair: The current information available to me suggests that particular option is not available to us.

Ms Lankin: Deem it to be an option available, Mr Chair.

Mrs Caplan: This is Harris democracy in action.

Interjections.

The Chair: So have we agreed to same vote?

Mr Maves: What happens when you have someone leave the room? We have to take that vote again.

Interjections.

The Chair: Have we agreed to same vote?

Ms Lankin: We can only do that if people are actually in the room.

Interjections.

Mrs Caplan: We wouldn't want to waste your time in this kingdom of democratic freedoms. We wouldn't want to slow you down at all. We can deem it all. Forget the votes.

The Chair: The Liberal amendment to subsection 1(2). All those in favour?

Interjection: Same vote.

The Chair: Mr Young was not in the room before; it can't be same vote.

Ayes

Caplan, Lankin, McLeod, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Young.

The Chair: The motion is defeated.

The next motion is on page 11C. It's a government amendment to subsection 1(3).

Mrs Caplan: On a point of order, Mr Chair: On the government amendments, there may be some in this bill that I could support, but without an explanation from the government, I am afraid I will be unavailable to do that.

The Chair: There can be no explanations.

The government amendment to subsection 1(3).

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Young.

Nays

Caplan, Lankin, McLeod, Silipo.

The Chair: The motion carries.

The next amendment is a Liberal amendment, subsection 1(3).

Ayes

Caplan, Lankin, McLeod, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Young.

The Chair: The next is a government amendment to the same section.

Mrs Caplan: Can I request an explanation of this?

The Chair: Mrs Caplan, we can have no explanations, no debates on any of the amendments. We're putting the questions. That is all we're doing.

Mrs Caplan: I'm not allowed to ask a question?

The Chair: You're not allowed to ask any questions.

Mrs McLeod: Mr Chair, just so I can clarify it a little, and I will ask just for a clarification, the interpretation of there being no amendment and no debate, which were the words that you read to us from the order directing the committee, no debate is interpreted to mean that there can't even be a statement as to what amendment is before the committee?

The Chair: That is right.

Mrs Caplan: And no questions at all?

The Chair: No questions.

Mrs McLeod: Is that an interpretation or a standing order, Mr Chair?

The Chair: No questions, no debate. That is my interpretation of the order.

It's the government amendment to subsection 1(3). All those in favour?

Mrs McLeod: Mr Chair, could I just then ask, are there precedents for other interpretations of that?

The Chair: Not that I'm aware of.

On subsection 1(3), the government amendment?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Young.

Nays

Caplan, Lankin, McLeod.

The Chair: That amendment is carried.

The next amendment is a Liberal amendment to subsection 1(3).

Ayes

Caplan, Lankin, McLeod.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Young.

The Chair: The next amendment is a Liberal amendment to the same section, subsection 1(3).

Mrs Ecker: Can you keep doing the page numbers, please, if that's all right?

The Chair: Page 13. All those in favour?

Mr Sampson: Same vote.

The Chair: I'm a little confused. Are we doing the same vote? People keep coming in and out of the room. Are we agreeing to same vote and same vote reversed? Is that basically the process you want to follow? I'm at your disposal. You tell me how we want to do this.

Mr Maves: It has to be consecutive that we're going to vote or they're going to vote in the same manner, but when it's consecutive, we can call same vote as long as our members and the members opposite stay in the room. As soon as they don't, like Mr Silipo's left, I believe you have to read them out. Whatever is easiest for you, Mr Chair. Whichever way you want to do this.

Mrs McLeod: Mr Chair, I believe Mr Maves is right.

The Chair: Same vote and same vote reversed?

Mrs McLeod: No—

Ms Lankin: As long as the membership of the committee remains the same. If someone exits the room, on that vote you will have to do a read and then you can proceed with same vote. But you do have to accurately record people in the room and out of the room. We can't deem Mr Tascona and Mr Silipo to be in the room at this point in time.

The Chair: It's rather difficult for me to keep track of who's in and who's not in, so I would suggest we just take every vote.

On the Liberal amendment to subsection 1(3).

Ayes

Caplan, Lankin, McLeod.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Young.

The Chair: That amendment is defeated. The next one is a government amendment to subsection 1(3).

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Young.

Nays

Caplan, Lankin, McLeod.

Mrs McLeod: I again wanted to save the need of calling out the names every time. The purpose of a recorded vote obviously is so that each of us is on record. Those who aren't in the room don't want to be on record because they haven't had that privilege. But I think we could manage that. The whip for the government side could call for same vote or say no. We can do the same thing. We'll look after whether our members are here or not.

Ms Lankin: Don't worry about it.

The Chair: Okay.

The next amendment is a government amendment to subsection 1(3). Same vote? The amendment's carried.

The next amendment is a New Democratic Party amendment to subsection 1(3). Same vote reversed? The amendment is defeated.

The next is an NDP amendment to subsection 1(4). Same vote reversed? The amendment is defeated.

The next is an NDP amendment to subsection 1(5). Same vote reversed? The amendment is defeated.

The next amendment is an NDP amendment to subsection 1(8).

Ms Lankin: Wait, wait, wait.

Mr Maves: Page 19, I make it.

The Chair: Page 19.

Mr Maves: Page 18 was a replacement, by the one that was voted on.

The Chair: Same vote reversed? The amendment is defeated.

Shall section 1, as amended, carry? All those in favour?

Interjections: Carried.

The Chair: All those opposed?

Clerk Pro Tem (Mr Todd Decker): Mrs McLeod, Mrs Caplan, Ms Lankin.

The Chair: If we're going to have the same vote, you need to tell me.

Okay, all those in favour of section 1 carrying, as amended?

Interjections: Carried.

Mrs Caplan: No.

Mrs McLeod: I thought the vote had been taken and defeated.

Mr Clement: Carried. Same vote.

The Chair: I'm going to have to ask for a little bit of help here. If you want the same vote, you have to indicate to the Chair that you want the same vote. I'm not a mind reader.

Interjection: He did, Mr Chair.

The Chair: But he didn't say it the first time around.

Mr Clement: I'm sorry. I had Bart in my ear.

The Chair: So section 1, as amended, is the same vote?

Mrs McLeod: Frances, was your amendment, the last one, defeated?

Interjections.

Mrs Caplan: That should've been the same vote for hers. Would you like to reopen it?

Mr Sampson: Yes.

Mrs Caplan: I don't think you can in this process.

Mr Sampson: Mr Chairman, if I can roll back the procedure, you called the vote, asked for the opposing; you didn't call for the affirmatives.

Mr Clement: He said, "Are you carrying section 1, as amended?" And I said carried.

The Chair: But nobody said same vote.

Mrs Caplan: That's right.

Mr Sampson: No, no. You called, Mr Chair, for the vote. You got the negative and then you looked over here for the affirmative and we had our hands up.

Mrs Caplan: Check Hansard. You guys just blew it.

The Chair: I really do think the easiest process—because nobody seems to be too intent on cooperating on the same vote thing—is let's just call the votes.

Ms Lankin: Did you say no one is intent on cooperating? We've been quite intent on cooperating.

The Chair: I'm sorry, Ms Lankin.

Let's go back to section 1. Shall section 1, as amended, carry?

Mrs Caplan: I want you to know it's been done. You can't reopen.

Mr Sampson: No, it hasn't. He called the vote.

Mr Clement: I said "Carried."

Interjection: We all said "Carried."

1320

The Chair: Shall section 1, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Young.

Nays

Caplan, Lankin, McLeod.

Section 1, as amended, shall carry.

Ms Lankin: He deems the first vote incorrect.

The Chair: Section 2, the first amendment is an NDP amendment to subsection 2(3). Shall the amendment carry?

Mrs Caplan: Same vote reversed.

The Chair: The amendment is defeated.

The next amendment to subsection 2(3) is an NDP amendment. Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment to subsection 2(3) is an NDP amendment. Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a Liberal amendment to subsections (2), (8) and (9). Same vote? The amendment is defeated.

Shall section 2 carry? The same vote reversed? Okay, thank you.

Shall section 3 carry? Same vote. Section 3 carries.

Shall schedule E carry as amended? Same vote?

Mrs McLeod: Mr Chairman, are you prohibited by order, even when an entire schedule passes, from reading the name of the schedule?

The Chair: I read it at the beginning, Mrs McLeod. Schedule E carried as amended. We now move to schedule F, the health services restructuring act. Page 33C, a Liberal amendment to subsection—

Mrs McLeod: Mr Chairman, you indicated to me when I asked about the reading of the name of schedule E that you had done that at the beginning. You have not done that for schedule F.

The Chair: Sorry, Mrs McLeod. I will go back and do that.

Mrs McLeod: I would further request that as you read the name of the schedule you also indicate the acts this is amending, and in the case of schedule F, because there is a prelude in Bill 26 that sets out the number of acts amended by a single schedule and indicates some of the most important features set out below, that you at least give some idea of what it is we're dealing with, because I know from that point on we'll have no idea.

The Chair: Schedule F is the health services restructuring act.

Mrs McLeod: And amends—

The Chair: Mrs McLeod, I'd just as soon you allowed me to do this the way I'm instructed to do it, please.

The amendment we're dealing with is a Liberal amendment on page 33C. It amends subsection 6(8). Shall the amendment carry? Everybody is supporting it? Okay. So we need to record the vote then, right?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, McLeod, Sampson, Young.

The Chair: The amendment carries unanimously. Shall section 6, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Young.

Nays

Caplan, Lankin, McLeod.

The Chair: Section 6, as amended, carries.

The next amendment we have not dealt with is on page 36D, an amendment to subsection 9.1(2). Shall the amendment carry?

Ayes

Clement, Ecker, Hardeman, Johns, Lankin, Maves, Sampson, Tascona, Young.

The Chair: The amendment carries unanimously. Shall section 8, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod.

The Chair: Section 8, as amended, carries.

Ms Lankin: Mr Chair, on a point of order: We're coming up to some sections of—I'm not sure if I can say it, or if you'll allow me that latitude—the Public Hospitals Act and some other sections under schedules F and G for which I had tabled questions with the ministry and have not received the answer as of this point in time.

The Chair: At this particular point in this process, that is not a point of order.

Ms Lankin: It was raised by Mrs McLeod two days ago for you to provide us with a list of outstanding questions that had been tabled that had not yet been answered. I've yet to receive that information from you; you'd undertaken to do that. There are specific sections coming up for which I had tabled questions and have not received answers from the ministry.

1330

The Chair: In this process we're in right now, that is not a point of order.

Ms Lankin: I have to vote on these amendments without having had any explanation, any opportunity to debate, any opportunity to ask questions other than tabled questions that I have properly tabled. Now, I have to assume my request for that information has been refused. I have not been given the answers to my questions.

The Chair: On a point of order, Mrs McLeod?

Mrs McLeod: Yes, it is a point of order. Mr Chairman, I would suggest to you that a point of order can interrupt the proceedings at any point, which is what this point of order is doing.

The Chair: This particular point of order that Ms Lankin raised is not in order. Have you got another point of order?

Mrs McLeod: As the individual who tabled the question, I do have a point of order in asking when my question will be responded to. When we reach the end of this farcical process we're currently involved in, Mr Chairman, you will declare, according to the absolute letter of the order from Mr Eves, that this process is now at an end. The last time I waited courteously until the end of something before I made a point of order was when Mr Eves was delivering his financial statement and I waited to make the point of order that a bill had been introduced into the House without our knowledge. I'm not prepared to wait until the end of this farce to find out when our unanswered questions will be answered.

The Chair: Mrs McLeod, in this process, that is not a point of order.

Mrs McLeod: Then our questions will go unanswered until some foreseeable time in the future—

The Chair: My only position is, it's not a point of order.

Sections 9 through 12 were previously carried.

Page 41, an NDP amendment to subsection 13(3). Shall the amendment carry?

Ayes

Caplan, Lankin, McLeod.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

The next amendment, subsection 13(3), is an NDP amendment on page 42. Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a Liberal amendment to subsection 13(3). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a Liberal amendment to subsection 13(4). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is also a Liberal amendment to subsection 13(4). Shall the amendment carry? Same vote? The amendment is defeated.

Shall section 13, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod.

The Chair: Section 13, as amended, is carried.

Section 14; the first amendment is a government amendment to subsection 44(1.1). Shall the amendment carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod.

The Chair: The amendment carries.

The next amendment is a government amendment to subsections 44(3) and 44(4). Shall the amendment carry? Same vote? The amendment is carried.

The next amendment is a Liberal amendment to subsections 44(3.1) and (3.2). Shall the amendment carry?

Ayes

Caplan, Lankin, McLeod, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.
Shall section 14, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Silipo.

Mr Silipo: Mr Chair, as you know, I was out of the room for a few minutes. I just wanted to know how many Liberal or NDP amendments were passed by the committee during my absence.

The Chair: I guess you'll just have to go back and count them, Mr Silipo.

The next section is section 15. There are no amendments. Shall section 15 carry? Same vote? Section 15 carries.

Shall section 16 carry? Same vote?

Section 17. The first amendment is a Liberal amendment to subsection 15.1(1). Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is a government amendment to subsection 15.1(2). Shall the amendment carry? Same vote reversed? The amendment is carried.

Ms Lankin: Mr Chair, I appreciate that you're trying to move this through quickly, but I am trying to quickly scan the amendments. On a couple of them I have not been able to do that, and it's forcing me into a position of a presumption of voting against every government motion. I ask you to take a look and make sure we're all with you and not go quite as steamrollerish, if that's an appropriate adjective. What number are you on now?

The Chair: The next amendment is a government amendment, 45C(ii). It's an amendment to subsection 15.4(1). Shall the amendment carry? Same vote?

Mrs Caplan: We're prepared to support this one.

Ms Lankin: I don't have 45C(ii). That's why I was flipping through. Would you give me one moment?

Mrs Caplan: This is the notice of intention to revoke a licence. They brought that in at the last minute.

The Chair: Shall the amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, McLeod, Sampson, Silipo, Tascona, Young.

The Chair: The amendment carries unanimously.

The next amendment is a Liberal amendment to section 15.4, 45D. Shall the amendment carry?

Ayes

Caplan, Lankin, McLeod, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment does not carry.
Shall section 17, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Silipo.

The Chair: Section 17 shall carry.

Section 18. There's a government amendment, to subsection 18(3) on page 46. Shall the amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, McLeod, Sampson, Silipo, Tascona, Young.

The Chair: The amendment carries unanimously. Shall section 18, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Silipo.

The Chair: Section 18, as amended, carries.

Section 19. There's a Liberal amendment, 47A, to subsection 19(2). Shall the amendment carry?

Ms Lankin: Was 47 withdrawn?

Mr Clement: Yes, 47 was withdrawn.

The Chair: Shall the amendment carry? Unanimous. Can we get away with that? Can we agree that I just say—

1340

Mrs Caplan: Can we have a recorded vote?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, McLeod, Sampson, Silipo, Tascona, Young.

The Chair: The amendment carries unanimously. Shall section 19, as amended, carry?

Ayes

Clement, Ecker, Johns, Hardeman, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Silipo.

The Chair: Section 19, as amended, carries.

Section 20. There's a government amendment 47A(i) to subsections (4), (5) and (6). Shall the amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, McLeod, Sampson, Silipo, Tascona, Young.

The Chair: The amendment carries unanimously.

The second amendment I believe is a new section. It's an NDP addition, page 48. Shall the amendment carry?

Ayes

Caplan, Lankin, McLeod, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

Shall section 20, as amended, carry? Same vote? Section 20, as amended, carries.

Section 21. There is a Liberal amendment to section 5. Shall the Liberal amendment carry? Same vote, reversed? The amendment does not carry.

Shall section 21 carry? Same vote?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Silipo.

The Chair: Section 21 carries.

Section 22. There's a New Democratic Party amendment to subsection 22(2), page 49. Shall the amendment carry?

Ms Lankin: This is a good one. This says you've got to be Canadian-owned, you've got to be not-for-profit. You've got to support this one.

The Chair: Same vote?

Ayes

Caplan, Lankin, McLeod, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

The second is a Liberal amendment—addition of section 6. Shall the amendment carry? Same vote? The amendment is defeated.

Shall section 22 carry? Same vote, reversed? Section 22 carries.

Section 23. The first amendment is a government amendment to clauses 7(6)(a) and (b)—

Mr Young: Could you tell us the page number, Mr Chair?

Mrs Caplan: That's unreasonable. You're not allowed to ask that question.

The Chair: Page 50A(i). Shall the amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, McLeod, Sampson, Silipo, Tascona, Young.

The Chair: The amendment's carried unanimously.

Ms Lankin: Doesn't it feel good that we're all supporting this issue together?

Mrs Caplan: Do they know what we're doing?

Ms Lankin: Do they know what we're voting on?

The Chair: The next amendment is a government amendment to subsection 7(11). Shall the amendment carry? Same vote? Unanimous. Two in a row. The amendment carries unanimously.

The next amendment is a Liberal amendment to subsection 7(11). Shall the amendment carry?

Ayes

Caplan, Lankin, McLeod, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

The next amendment is a Liberal amendment to sections 7 and 8. Shall the amendment carry? Same vote?

The next amendment is a government amendment to clauses—

Mrs Caplan: Would you slow down a minute? I want to check this one over and see if it's what I think it is. Since I can't ask a question about it, at least can I read it?

The Chair: Page 51B(i). It's a government amendment.

Shall the amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, McLeod, Sampson, Silipo, Tascona, Young.

The Chair: The amendment carries unanimously.

The next amendment is a government amendment to subsection 8(7).

Ms Lankin: Just to make sure that I'm back in sync here, this is 52?

The Chair: No, 51B(ii).

Mrs Caplan: If I could ask a question on this one, I would support it. But as I read it, it's impossible to know what it does. I think it's okay, but I'm not sure it's good.

The Chair: Have you come across it there, Ms Lankin?

Ms Lankin: No.

Mr Clement: This is a replacement motion we filed yesterday.

Ms Lankin: Yes, I know.

Mrs Caplan: I'd just like to ask one question about it.

The Chair: It's 51B(ii).

Ms Lankin: I've gone one past it.

The Chair: Shall the amendment carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Silipo.

The Chair: The amendment carries.

Mrs McLeod: Mr Chairman, have you considered putting a test question at any point just to see if everybody knew what they just voted on?

The Chair: The next amendment is a government amendment to subsection 8(9), page 51B(iii). Shall the amendment carry?

Mr Clement: Same vote, please.

Mrs Caplan: No, this one we'll support.

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, McLeod, Sampson, Silipo, Tascona, Young.

The Chair: The amendment carries unanimously.

The next amendment is the Liberal amendment to subsection 8(9), page 52A.

Mrs Caplan: This is our motion.

The Chair: Shall the amendment carry? No?

Ayes

Caplan, Lankin, McLeod, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

The next amendment is a government amendment, adding section 8.1, page 52A(i).

Ms Lankin: Mr Chair, this is this long. Just give me a second to scan it.

Mrs Caplan: It's two pages, Frances; there's a second page.

Mrs McLeod: This is another of the ones tabled at 4 o'clock yesterday.

The Chair: Shall the government amendment, adding section 8.1, carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, McLeod, Sampson, Silipo, Tascona, Young.

The Chair: The amendment carries.

Shall section 23, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Silipo.

The Chair: Section 23, as amended, carries.

Shall section 24 carry? Same vote?

Section 24 carries.

Section 25. There is a government amendment, subsection 10(4), page 53.

Shall the government amendment carry? Same vote.

Shall section 25, as amended, carry?

1350

Mrs Caplan: Just a minute. I'm going to refer to the bill so I can see which sections are being struck out.

A point of order, Mr Chairman: What I find interesting is my understanding that a motion that says a section of the bill be struck out without replacing it with something is ruled out of order and that you just vote against that section. Technically, I think that's correct, so I think the government's motion is out of order.

The Chair: I don't think we're at that one yet, Mrs Caplan. Are you at the one ahead?

Mrs Caplan: Section 26?

The Chair: No. We're still at 25.

Mrs McLeod: Could you give us a page number for the amendment we're voting on?

Interjections.

The Chair: Basically, the question I asked is, shall section 25 carry? We've already voted on the amendment.

Mr Silipo: You said no.

Mrs Caplan: I thought we did that already.

The Chair: Shall section 25 carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Silipo.

The Chair: Section 25 carries, as amended.

On section 26 there is a government amendment.

Mrs Caplan: Point of order: It's out of order.

The Chair: Thank you very much, Ms Caplan. The government amendment is out of order. The way to deal with that issue is to vote against it.

There are no amendments to section—

Ms Lankin: This is one for the cameras. Government members are going to be voting against a whole section of their own bill.

Mrs Caplan: This is one that there was no presentation on. You made a mistake.

The Chair: Shall section 26 carry? All those in favour? All those opposed?

Ms Lankin: It's defeated unanimously.

Mrs Caplan: That's right. Unanimous defeat of a government section.

The Chair: I said, shall section 26 carry, and everybody said no.

Mrs Caplan: We can't even ask a question about this one. The government is voting against a whole section of their own legislation.

The Chair: Mrs Caplan.

Mr Clement: Mrs Caplan, I cannot hear the Chair when you yell in my ear like that.

Mrs Caplan: I'm not yelling in your ear; I'm yelling at this.

Mr Clement: It sounds just like it. I know you're 30 feet away, but it feels like you're—

Interjections.

The Chair: Shall section 26 carry?

Mrs McLeod: We just defeated it unanimously.

The Chair: Well, there was some confusion about what we were doing here.

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, McLeod, Sampson, Silipo, Tascona, Young.

The Chair: There are no amendments to sections 27, 28, 29, 30 and 31. Shall sections 27 through 31 carry?

Ms Lankin: What if there are some that I want to vote in favour of and some I want to vote against, Mr Chair?

The Chair: We can take them one at a time, if you choose to.

Ms Lankin: I don't choose to; I just wanted to know if I had that option.

The Chair: Shall sections 27 through 31 carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Silipo.

The Chair: Sections 27, 28, 29, 30 and 31 are carried. Section 32 has a government amendment, page 55.

Mrs Caplan: Just a second.

Ms Lankin: One moment, please.

The Chair: Shall the amendment carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Silipo.

The Chair: The amendment carries.

Shall section 32, as amended, carry? Same vote? Section 32, as amended, carries.

Section 33. There is a government amendment to subsection 33(3) on page 56. Shall the amendment carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Silipo.

The Chair: The amendment carries.

Shall section 33, as amended, carry? Same vote? Section 33, as amended, carries.

Section 34. The first amendment is a government amendment to subsection 37.1(1) on page 57. Shall the amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, McLeod, Sampson, Silipo, Tascona, Young.

The Chair: The amendment carries unanimously.

The second amendment is a government amendment to subsection 37.1(4). Shall the amendment carry? Same vote? The amendment carries unanimously.

The next amendment is a Liberal amendment to section 37.1. Shall the amendment carry?

Ayes

Caplan, Lankin, McLeod, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

The next amendment is a Liberal amendment to subsection 37.2(1) on page 59C. Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is an NDP amendment to subsections 37(1), (2), (3) and (4). Shall the amendment carry? Same vote? The amendment is defeated.

Shall section 34, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Silipo.

The Chair: Section 34, as amended, carries.

Section 35. The first amendment is a government amendment adding section 38, on page 62A.

Ms Lankin: If everyone else is going to be immune to prosecution, the College of Physicians and Surgeons may as well be.

The Chair: Shall the amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, McLeod, Sampson, Silipo, Tascona, Young.

The Chair: The amendment carries unanimously.

Next is a government amendment to section 38 on page 63. Shall the amendment carry? Same vote?

Ms Lankin: Just a second, please. I'm not sure that I agree with that.

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Silipo.

The Chair: The amendment carries.

Shall section 35, as amended, carry? Same vote? Section 35, as amended, carries.

Shall section 36 carry? Same vote? Section 36 carries.
1400

Section 37: There is a government amendment to subsection 38.2(2) on page 64. Shall the government amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, McLeod, Sampson, Silipo, Tascona, Young.

The Chair: The amendment carries unanimously.
Shall section 37, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Silipo.

The Chair: Section 37, as amended, carries.

Section 38: The first amendment is a government amendment to subsection 38(1) and subsection 42(1) on page 65. Shall the government amendment carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Silipo.

The Chair: The amendment carries.

The next amendment is a government amendment to subsection 38(1), paragraph 1.2 of subsection 42(1). Shall the amendment carry?

Mrs Johns: That was withdrawn, I think.

Mrs Caplan: Would you tell us the page number—

The Chair: Page 67.

Mrs Caplan: I think we did that already.

The Chair: The next amendment we consider is the government amendment to subsection 38(4), paragraph 19.1 of subsection 42(1) on page 67. Shall the amendment carry? Same vote?

Mr Clement: I don't know. What was the same vote last time?

Interjection: Recorded vote.

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Silipo.

The Chair: The amendment carries.

The next amendment is a government amendment to subsection 38(4.1), paragraph 21 of subsection 42(1). Shall the amendment carry? Same vote?

Interjection: Same vote on our side.

Mrs Caplan: Could you hold for just a minute? We're voting against it.

The Chair: Okay. Same vote?

Mrs Caplan: Same vote.

Interjection: Same vote on our side.

Ms Lankin: Same vote.

The Chair: The amendment carries.

The next amendment is a government amendment to subsection 38(5), paragraphs 31 and 32 of subsection 42(1). Shall the amendment carry? All those in favour?

Clerk of the Committee (Mr Todd Decker): Mr Maves, Mr Clement, Ms Ecker, Mr Sampson, Mr Tascona, Mr Hardeman, Mr Young, Ms Johns, Ms Lankin, Mr Silipo.

The Chair: All those opposed?

Clerk of the Committee: Mr Phillips, Mrs McLeod, Mrs Caplan.

Mrs Caplan: Mr Phillips just arrived. Could you tell him which one we're at, please?

The Chair: Yes. That amendment is carried. We're on page 69A of your binder, Mr Phillips.

Mrs Caplan: Is it a Liberal amendment?

Interjection: No, 69.

Mrs Caplan: Well, he said 69A. I want to make sure we know which one we're voting on.

The Chair: We've just finished voting for 69. We're now going to 69A.

Mrs Caplan: Okay. We voted in support of 69. Is that correct?

The Chair: That wasn't what we took, no.

Mrs Caplan: Could I ask that we—

The Chair: We took it that you voted against 69.

Mrs Caplan: No. We'd like to vote in support of that.

Mrs McLeod: Mr Chairman, my hand was clearly up in support of 69.

Mrs Caplan: Could you just take a moment, take a breath and let's do this right.

Mr Clement: We'll let him redo that, sure.

The Chair: The request has been made to revote because of confusion. Mr Phillips, coming into the room you've caused mass confusion.

Interjections.

Mr Phillips: Turn the TV off.

Mrs McLeod: The good news is that when you get confused you get to do it over again.

Interjections.

Mrs McLeod: If you get confused enough you get a second chance.

The Chair: Okay. Let's go back and redo page 69, which is a government amendment to subsection 38(5), paragraphs 31 and 32.

Mrs Caplan: I think this is what was recommended by the privacy commissioner.

The Chair: Shall the amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, McLeod, Phillips, Sampson, Silipo, Tascona, Young.

The Chair: The amendment carries unanimously.

The next amendment, on page 69A, is a Liberal amendment to subsection 38(5), paragraphs 31, 32 and 33 of subsection 42(1).

Shall the amendment carry?

Ayes

Caplan, Lankin, McLeod, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

The next amendment is a New Democratic Party amendment to subsection 38(5), paragraphs 31, 32, and 33 of subsection 42(1), on page 70.

Shall the amendment carry? Same vote? The amendment is defeated.

Ms Lankin: Mr Chair, was that amendment that we just voted on in order? Would you look at it?

Mrs Caplan: No, it wasn't, but that's okay. Just keep going. The next one's out of order. I'll call the government's amendments out of order; I won't call yours out.

Ms Lankin: After we voted on it, I just wondered if was even in order.

Mrs Caplan: No, it was out of order.

Ms Lankin: What do you think?

Mr Clement: It's the Chair's call.

Mrs Caplan: You want to bet? Want to bet, lawyer? The Chair technically should not accept anything that's out of order, and if he does, that doesn't make it in order; it makes it a mistake.

The Chair: I guess on that basis, the Chair made a mistake.

Ms Lankin: I expected you to call it out of order, that's all.

The Chair: In view of the previous vote, it was, yes.

Mrs Caplan: They're not only mistakes. In fact, the one before that was a mistake, too. We'll just see how many mistakes we rush through here and maybe that will—

The Chair: The next amendment is a government amendment to subsection 38(6), subsection 42(5).

Mrs Caplan: Which one are you at now?

The Chair: Ms Caplan, if you would listen instead of talking, you'd know which one we're on.

Mrs Caplan: If you'd go a little slower—

The Chair: We're on page 71.

Mrs Caplan: That's out of order, Mr Chair.

Mrs McLeod: We thought you had ruled it out of order, Mr Chairman, which is why we're surprised you're calling a vote on it.

Mrs Caplan: Another mistake?

The Chair: The Chair sees no reason why that particular amendment's out of order.

Ms Lankin: If I may, I'm not at all trying to be disruptive, but I would like to make sure that we have consistent rulings. This is an amendment which just simply strikes out sections of the bill and does not replace them with anything, and my understanding is that's out of order and that you have to vote against it.

The Chair: Ms Lankin, this amendment—

Ms Lankin: It's because it's a subsection that you're making a different ruling?

The Chair: Because it's a subsection.

Ms Lankin: Perhaps it would be helpful, rather than you sort of rolling over this here and saying, "No, it's in order, let's go ahead," to explain the difference so that we don't raise the same point again. Because the one before it, that I just raised the point on, was in fact out of order.

The Chair: Since we do not vote on subsections, a motion to remove a subsection is not out of order.

Mrs McLeod: Mr Chairman, I would request an apology to the member of our committee for suggesting that she was inappropriately speaking and therefore not following, when in fact you yourself, in your haste to go through these, had just made two mistakes on the two previous motions in allowing them to be called. I think some confusion as to which order you were calling is legitimate and there should be an apology in order.

The Chair: Mrs McLeod, if you think that I owe Mrs Caplan an apology for saying something about her when she was interrupting, then I give her that apology.

Mrs Caplan: Thank you very much.

The Chair: The next amendment is a government amendment to subsection 38(6). Subsection 42(5) is the amendment. Shall the amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, McLeod, Phillips, Sampson, Silipo, Tascona, Young.

Mrs McLeod: Mr Chairman, would you provide a page number before we vote?

The Chair: Page 71; I already did that.

The motion carries unanimously.

The next amendment is a government amendment to subsection 38(6), subsection 42(6). Shall the amendment carry?

Mrs McLeod: Page number, please, before we vote, Mr Chair.

The Chair: Page 72.

Shall the amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, McLeod, Phillips, Sampson, Silipo, Tascona, Young.

The Chair: The amendment carries unanimously.
1410

The next amendment is a Liberal amendment on page 72A to subsection 38(6) of subsection 42(10). Shall the amendment carry?

Ayes

Caplan, Lankin, McLeod, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.
Shall section 38, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Phillips, Silipo.

The Chair: Section 38, as amended, carries.
Shall section 39 carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Phillips, Silipo.

The Chair: Section 39 carries.

Section 40. There's a New Democratic Party amendment to add subsection 40(2).

Mrs Caplan: Page number?

The Chair: Page 73. Shall the amendment carry?

Ayes

Caplan, Lankin, McLeod, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated. Shall section 40 carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Phillips, Silipo.

The Chair: Carried.

Shall schedule F carry, as amended?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Phillips, Silipo.

The Chair: Schedule F, as amended, carries.

We now move on to schedule G, Amendments to the Ontario Drug Benefit Act, the Prescription Cost Regulation Act and the Regulated Health Professions Act.

There are no amendments to sections 1, 2 and 3. Shall sections 1 through 3 pass?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Phillips, Silipo.

The Chair: Sections 1 through 3 carried.

Section 4. The first amendment is a Liberal amendment on page 73A to subsection 4(3). Shall the amendment carry? Same vote reversed?

Mr Clement: Recorded vote, please.

Ayes

Caplan, Lankin, McLeod, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated. The next amendment—

Ms Lankin: On a point of privilege: Would it be possible for the clerks to see if there's any way to put some more heat on in this room? I know you'd like to move us through us quickly, you don't want us to dally on any of these things, but personal discomfort is not a helpful way to do that.

The Chair: The next amendment is a government amendment to subsection 4(4). Shall the amendment carry? Same vote reversed? The amendment carries.

The next amendment is a Liberal amendment to subsection 4(4.1). Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is a government amendment to subsection 4(5.1). Shall the amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, Phillips, Sampson, Silipo, Tascona, Young.

The Chair: The amendment carries unanimously. Shall section 4, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: Section 4, as amended, carries. Shall section 5 carry? Same vote on section 5?

Mrs Caplan: Section 5, same vote. We are opposed.

The Chair: Section 5 carries.

Section 6. The first amendment, on page 75A, is a Liberal amendment to subsection 6(1). Shall the amendment carry?

Ayes

Caplan, Lankin, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

The next amendment is a government amendment to subsection 6(6), subsection 6(5), on page 76. Shall the amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, Phillips, Sampson, Silipo, Tascona, Young.

The Chair: The amendment carries unanimously.

The next amendment is a Liberal amendment to subsection 6(6), subsection 6(5). Shall the amendment carry?

Mrs Caplan: Actually, Mr Chairman, with respect, I think this is the same as the one that we just passed, sort of, and you could either rule it out of order or we would just withdraw it, because the amendment we just passed substantially does this. So we will withdraw this.

The Chair: Okay, that amendment has been withdrawn. Thank you, Mrs Caplan.

Shall section 6, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: Section 6, as amended, carries.

Section 7. It's a Liberal amendment on page 76A(i), an amendment to subsection 7(3), section 7.1. Shall the amendment carry?

Ms Lankin: Wait a minute. Could you please give me the reference again?

The Chair: Page 76A(i).

Mrs Caplan: All this does is recognize the Ontario Pharmacists' Association. That's all it does. It just recognizes the pharmacists. Everything that Jim Wilson said he ever believed in is in this amendment when it came to pharmacy and their representation. That's all it does. This is simple. It does not affect anything except saying you have to negotiate.

The Chair: Shall the amendment carry?

Ayes

Caplan, Lankin, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated. Shall section 7 carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: Section 7 carries.

There are no amendments to sections 8 through 10. Shall sections 8 through 10 carry? Same vote. Sections 8, 9 and 10 are carried.

Section 11. First, on page 76B, is a Liberal amendment to section 11.1. Shall the amendment carry?

Ayes

Caplan, Lankin, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

1420

The Chair: The amendment is defeated.

The second amendment is a Liberal amendment to section 11.2. Shall the amendment carry? Same vote? The amendment is defeated.

Shall section 11 carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: All those opposed to section 11?

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: Section 11 carries.

Section 12. The first amendment is a government amendment on page 77 to subsections 13(1) and (2).

Ms Lankin: Mr Chair, my copy is illegible.

Mrs Caplan: It doesn't matter, Frances. We're not allowed to ask questions.

Interjection: I have an extra copy here.

Ms Lankin: I'd appreciate it. I honestly can't read this.

Mrs Caplan: It doesn't matter; you don't have to read it.

Ms Lankin: If you'll give me a minute, because it is—I'll give you my copy; you'll see you can't read it.

The Chair: Bad photocopier.

Mr Phillips: While she's doing that, what's the score so far? How many Liberal amendments went through?

Mr Hardeman: This is not a game.

The Chair: Are you okay, Ms Lankin?

Shall the government amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, Phillips, Sampson, Silipo, Tascona, Young.

The Chair: The motion carries unanimously.

The next amendment is a Liberal amendment to section 13, on page 77A. Shall the amendment carry?

Ayes

Caplan, Lankin, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

The next amendment to section 13 is an NDP amendment on page 78.

Mrs Caplan: It should be ruled out of order, Mr Chairman, because it's identical to the one that's just been voted on.

The Chair: The next amendment, the New Democratic Party amendment, is the same as the Liberal amendment we just defeated. Therefore—

Ms Lankin: I'll withdraw it before you can rule it out of order.

The Chair: It's withdrawn by Ms Lankin. Thank you very much, Ms Caplan. I appreciate that.

The next amendment is a government amendment to clause 13(3)(c). Shall this amendment carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: The amendment carries.

The next amendment is a government amendment to subsections 13(4) and (5), on page 81. Shall the amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, Phillips, Sampson, Silipo, Tascona, Young.

The Chair: The motion carries unanimously. Shall section 12, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: Section 12, as amended, carries.

There are no amendments in sections 13 and 14. Shall sections 13 and 14 carry? Same vote?

Sections 13 and 14 are carried.

Section 15. First is a government amendment to subsection 15(2), clause 8(1)(e1.1), on page 82. Shall the government amendment carry? Same vote?

Mrs Caplan: We're opposed.

The Chair: Same vote. The amendment is carried.

The next amendment is a Liberal amendment to subsection 15(4), clause 18(1)(g.2). Shall the amendment carry? Same vote reversed?

Interjection: Same vote reversed. What page, Mr Chair?

The Chair: The amendment is defeated, page 82A.

The next amendment is a government amendment to subsection 15(6)—

Mrs Caplan: Could you hold it for just a minute, please, while we read that?

The Chair: Clause 18(1)(g.6) on page 83. Shall the amendment carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: The amendment carries.

The next amendment, on page 84, is a government amendment to subsection 15(8), clauses 18(1)(k.5) and (k.6). Shall the amendment carry? Same vote?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, Phillips, Sampson, Silipo, Tascona, Young.

The Chair: The amendment carries unanimously.

The next amendment is a Liberal amendment to subsection 15(8). This amendment is a Liberal amendment which is out of order.

Mrs Caplan: Can I ask a question, Mr Chairman? Is that because—

The Chair: I'm sorry.

Mrs Caplan: Oh, I can't ask questions.

The Chair: No.

Mrs Caplan: Not even to know whether it's in order or out of order?

The Chair: No, sorry.

The next amendment is an NDP amendment which is also out of order.

Ms Lankin: On page 85?

The Chair: Yes.

The next amendment is a Liberal amendment to subsection 15(9.1), subsection 18(1.1).

Mrs Caplan: A point of order, Mr Chairman: If those are ruled out of order, are we not given the opportunity to vote against that particular clause that's been ruled—where's there an amendment to strike it out, we can't then vote against the clause? Don't you have to call the clause, then?

The Chair: We don't vote on clauses; we just vote on sections.

Mrs Caplan: Or on the section that this was set to amend? Will we have that opportunity to vote on that?

The Chair: We will vote on the whole section when we finish.

Mrs Caplan: The whole section. I see.

Ms Lankin: Mr Chair, just again, I'm sorry. If you would explain to me, is the reason that those are out of order because the government motion struck those subclauses out and replaced them with something?

The Chair: Yes.

Ms Lankin: And it is not in order to have a subsequent vote that would strike out those subclauses? If it was a different subclause, you would allow it? It's because that subclause has been replaced with something; that's the reason? It's a test.

The Chair: It is a test and I didn't understand the question. I may not know the answer either.

Ms Lankin: Then that's my fault. If I'm not communicating clearly enough, I'll take full responsibility for that. I wanted to know if you ruled these two motions out of order because clauses 18(1)(k.5) and (k.6) had been previously struck down and replaced with something.

The Chair: Your amendment is out of order because it seeks to remove a clause that has already been removed and replaced with something else.

Ms Lankin: You said that much clearer than I did. Thank you.

The Chair: It's amazing.

Getting back to where we were here, we're at a Liberal amendment to subsection 15(9.1), subsection 18(1.1). Shall the amendment carry?

Ayes

Caplan, Lankin, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.
Shall section 15, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: Section 15, as amended, carries.

1430

Section 16. The first amendment is a Liberal amendment, page 85B, section 10. Shall the amendment carry?

Mrs Johns: Is that section 16 you're talking about?

The Chair: It's a typo.

Ms Lankin: You have a different page than I do then, sir.

The Chair: I've got a whole different book here.
Shall the amendment carry?

Ayes

Caplan, Lankin, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

The next amendment is a Liberal amendment to section 20.1 on page 85C. Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a Liberal amendment to section 21 on page 85D. Shall the amendment carry? Same vote? The amendment is defeated.

Shall section 16 carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: Section 16 carries.
Shall section 17 carry? Same vote.

Section 18, first amendment is a Liberal amendment to section 23 (1.1) on page 85E. Shall the amendment carry? Same vote reversed?

Ayes

Caplan, Lankin, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

The next amendment is a Liberal amendment to subsection 23(5). Shall the amendment carry? Same vote.
Shall section 18 carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: Section 18 carries.

There's a Liberal amendment to section 18.1, adding section 24. The amendment is on page 85F(i). Shall the amendment carry?

Ayes

Caplan, Lankin, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

Page 85F(ii), a Liberal amendment, section 18.1. Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a Liberal amendment, section 18.15, number 85G. Shall the amendment carry? Same vote.

The next amendment is a Liberal amendment, section 18.15, on page 85H. Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a Liberal amendment to section 18.2 on page 85I. Shall the amendment carry? Same vote? The amendment is defeated.

There are no amendments to sections 19, 20, 21 and 22. Shall sections 19 through 22 carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: Sections 19 through 22 carry.

The next section is section 23. There's a government amendment on page 86 to subsection 7(1). Shall the amendment carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: The amendment carries.

The next amendment is a Liberal amendment to section 7 on page 86A. Shall the amendment carry? Same vote reversed? The amendment is defeated.

Shall section 23, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: Section 23, as amended, carries.

Shall section 24 carry? Same vote?

Section 24 carries.

Section 25: There is a Liberal amendment on page 86B to subsection 25(1), clause 14(1)(c.1). Shall the amendment carry?

Ayes

Caplan, Lankin, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: Shall section 25 carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: Section 25 is carried.

Shall section 26 carry? Same vote? Section 26 is carried.

Section 27. There's a government amendment to subsection 27(1), clause 36(1)(d), on page 87. Shall the amendment carry? Same vote?

Shall section 27, as amended, carry? Same vote? Section 27, as amended, carries.

There are no amendments to sections 28, 29, 30, 31 and 32. Shall sections 28 through 32 carry? Same vote? Sections 28 through 32 are carried.

Shall schedule G, as amended, carry? Same vote?

Mrs Caplan: I'd like to actually record it.

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: Schedule G, as amended, is carried.

Ms Lankin: I have a procedural question about this afternoon as to whether you will be taking any kind of five-minute, 10-minute or 15-minute break at any point in time, particularly before the next amendment comes up, because the next amendment supports the Canada Health Act, and I want the government members to have a chance to think about that. So I wondered if you were going to take a five-minute break. This might be a good time to do so.

The Chair: Unfortunately, we're not.

The next schedule is schedule H.

Ms Lankin: Wait a minute. This is an interesting question on a point of personal privilege. Are you saying that if I feel compelled, for whatever reason, to have to leave this room for a couple of minutes that I am denied the opportunity to vote on sections in the bill that I have dedicated so much time and listening to the public and understanding and preparing amendments, that you will deny me that opportunity?

The Chair: Unfortunately, that would appear to be the case.

The next schedule is schedule H, amendments to the Health Insurance Act and the Health Care Accessibility Act.

Shall section 1 carry?

Mrs Caplan: Is this the amendment by the NDP?

The Chair: No, this is section 1.

I stand corrected. There is the opportunity for one 20-minute recess if somebody requests it.

1440

Mr Sampson: Mr Chair, is the reading of the order only one 20-minute, or is it cumulative 20-minutes?

The Chair: No, it's one 20-minute.

Ms Lankin: Actually, I think, Mr Chair, given the fact that we know we would never get unanimous consent on when to use that, it must have meant one 20-minute for each party, right?

The Chair: No.

Ms Lankin: How about we try to get unanimous consent to see if we can split that 20 minutes three ways to be used by each party?

The Chair: I think it would probably take us the rest of the afternoon to do that.

Ms Lankin: But, you see, I wouldn't feel compelled to stay for that debate.

The Chair: So that 20 minutes is available to us to use. It's actually to prepare for a vote, but since we're going through the votes one at a time, I guess we—

Mr Silipo: Mr Chair, I think actually technically, since we deemed the earlier portions, we've gone beyond that 20 minutes and we're now voting on the division. So we technically, I think, could take a break at any time that we agreed to.

Ms Lankin: Actually, I think you mean technically we can't even take the 20 minutes.

The Chair: No, I think we have access to a 20-minute break at some point in time, but just the one, and there wouldn't be another one available to us.

Mr Silipo: Do you get paid extra for this, Mr Chair?

Ms Lankin: Is it worth it?

The Chair: I'm not sure.

Shall section 1 of schedule H carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: Section 1 carries.

There's been a proposed new section 1.1, a New Democratic Party amendment, on page 88. Shall the amendment carry?

Ayes

Caplan, Lankin, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

In section 2, the first amendment we're dealing with is a government amendment to subsection 2(1), subsections 2(4.1) and (4.2), on page 89.

Mrs Caplan: Just a minute, please.

The Chair: Shall the amendment carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: The amendment is carried.

The next amendment is a New Democratic Party amendment which is out of order, because it seeks to strike out sections of the bill that have now been replaced.

The next amendment is a government amendment to subsection 2(2), clause 2(5)(c), on page 91.

Ms Lankin: Mr Chair, I have a Liberal amendment 90A. Has that been withdrawn?

The Chair: Yes, it has.

Ms Lankin: It has? It's not on my list of any withdrawn amendments. It's not a big deal, because it's out of order, if it hasn't been withdrawn.

Mrs Caplan: I think they withdrew it because it's out of order.

The Chair: Shall the government amendment on page 91 carry? Same vote? The amendment is carried.

The next amendment is a government amendment on page 92 to subsection 2(3), subsection 2(6). Shall the amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, Phillips, Sampson, Silipo, Tascona, Young.

The Chair: The amendment carries unanimously. Shall section 2, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: Section 2, as amended, carries.

There's a proposed new section 2.1, a government amendment, page 95. Shall the amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, Phillips, Sampson, Silipo, Tascona, Young.

The Chair: The amendment carries unanimously.

The next amendment as proposed by the New Democratic Party is out of order, basically because it is at cross-purposes with the amendment we just approved.

Ms Lankin: Was 96A withdrawn? It's not on my list.

The Chair: That's one we just discussed, okay?

Mrs Caplan: He just ruled that out of order.

Ms Lankin: Hold on. The Liberal motion 96A, which is very similar to the NDP motion that you just ruled out of order—

Mr Clement: Before we got the binder, you gave us the first set, but 96A, the Liberal motion, was not in the binder. So was it withdrawn?

The Chair: But 96A is an NDP motion.

Ms Lankin: It's also a Liberal motion.

Mrs Ecker: It was also distributed as a Liberal motion.

Mrs Caplan: It was the same. You can rule it out of order, or I'll withdraw it. It's a farce anyway.

The Chair: Maybe you could withdraw it, Mrs Caplan.

Mrs Caplan: If it's easier for you, I withdraw it. It's going to be ruled out of order, so I might as well.

The Chair: Thank you very much.

Section 3. The first amendment is a government amendment, on page 97, to subsection 3(1), subsections 5(3) and (3.1). Shall the amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, Phillips, Sampson, Silipo, Tascona, Young.

The Chair: The amendment carries unanimously.
1450

Shall section 3, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: Section 3, as amended, is carried.

There's an amendment to section 4, a government amendment on page 98. It amends subsection 4(1), subsections 6(3) and (3.1). Shall the amendment carry? Same vote?

Shall section 4, as amended, carry? Same vote?

Interjections: Recorded.

The Chair: Okay.

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: Section 4, as amended, carries.

Sections 5 and 6. There are no amendments. Shall sections 5 and 6 carry? Same vote. Sections 5 and 6 carry.

Section 7. The first amendment is a NDP amendment. It amends subsections 11.2(6) and (7) and it's on page 99.

Ms Lankin: What happened to 98A and B?

The Chair: They must have been withdrawn.

Ms Lankin: They're not on any list where I've been informed that they've been withdrawn. They haven't been removed from the binder.

The Chair: Each party was given a copy of the final book today and asked to proofread it to make sure that

any amendments they had still outstanding were in there.

Ms Lankin: By the way, I'm not sure if that happened at a staff level, but the binder that was given to me was not one I was asked to look at to proofread. What I've just assumed as we've gone along—

The Chair: The terminology was a little wrong. Each of the parties was asked to provide a list of the amendments they wanted to make sure were in the final binder, and that is what is in the binder.

Mrs Caplan: We never withdrew these two amendments. The amendments to section 7 were duly tabled and they should be voted on.

The Chair: Basically, the situation—they're not in my binder. They weren't in my binder yesterday. All three parties were given the responsibility to confirm by 4 o'clock yesterday that the amendments they wished to have in the final section were in fact there.

Mrs Caplan: But they were duly tabled and they were in the first binder that was collated.

Ms Lankin: You must have deemed our response, because nobody asked me that question.

The Chair: I understand we did—

Mrs Caplan: I object. I just want it on the record that I object. They were duly and properly tabled. They were in the first binder that was circulated. There are hundreds of amendments. It is unreasonable and unfair for us to assume that it would be left out of the second binder and have to go through each and every one to make sure they're all there when they were in the first one. I object.

The Chair: I do understand that the government and the NDP both confirmed the contents of the binders and the Liberals didn't.

Okay. The next section we're dealing with—

Mr Phillips: Mr Chair, I'm sorry. I wasn't sure what you said there. Did you say that yesterday you said we should check your binder?

The Chair: The clerk's office notified each of the caucuses that they should let them know by 4 o'clock yesterday what the final contents of the amendment binder should be. The government and the New Democrats did that; the Liberals didn't.

Mr Phillips: You said that at committee?

The Chair: I didn't. The clerk's office said that to the caucuses.

Mrs Caplan: That was never placed on the record. That was never said at committee. I was not aware of that. I think that's very unfair.

Mr Phillips: I'm sorry, Mr Chair. Those were not your instructions?

The Chair: No, they were not my instructions.

Mr Phillips: Whose instructions?

The Chair: The clerk's instructions.

Mr Phillips: My memory's going on me. Was I instructed to do that?

The Chair: All I can go by is what I was told happened on the responsibility to make sure that the binder was up to date. Each party was asked to verify the final content.

Mr Silipo: Mr Chairman, on a point of order: We have a situation where we have committee members who haven't been privy to that process you just described. In just checking around, it seems to me that what I'm

hearing from the government members as well is that they've seen the amendment, they have it now in front of them, they're prepared to vote on it. So why don't we just proceed and vote on them instead of spending the next 15 minutes debating the procedure on this?

The parliamentary assistant I believe is aware of the amendment and certainly can give direction to her caucus members on whether to support this or not. Let's just get on with it that way. I think it would be a lot more straightforward than—

The Chair: Does everyone have a copy of 98A and 98B?

Interjections: Yes.

Mr Phillips: If I might, Mr Chair, just on process—

The Chair: Does everybody want to vote on it? Is that what the disposition is?

Mr Phillips: Mr Chair, if I might—

The Chair: If we're going to vote on them, Mr Phillips, let's just vote on them.

Mr Phillips: But this is actually quite important. I'm what's called the whip on the committee. One of my few duties is that theoretically I'm the person who I guess should have known that there was a rule that you had to check your binder.

The Chair: It wasn't my binder.

Mr Phillips: I thought you said your binder.

The Chair: I just said they're not in my binder.

Mr Phillips: I thought you said that by 4 o'clock you had to check your binder.

The Chair: No, I did not say that, sir. Do you want to argue about it or do you want to vote on them? You have a choice here. Why don't we just vote on them?

Mr Phillips: I don't want to argue about it at all. I'm just saying that we're trying to go through a process of fairness here. Nobody told me that the thing wasn't filed. This is a ridiculous enough process that you're put in charge of, Mr Chair, without saying to us that we were told when in fact I wasn't told, my colleague wasn't told, we didn't know. I'm, frankly, once again very upset with the process we're going through here. I think the public must be scratching their heads at the incompetence of a government to force us into this kind of nonsense.

The Chair: Is it the decision of the committee to vote on 98A and 98B? Okay. The Liberal amendment on page 98A, shall the amendment carry?

Ayes

Caplan, Lankin, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

Liberal amendment 98B. Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a New Democratic Party amendment, number 99, amending subsections 11.2(6) and (7). Shall the amendment carry? Same vote.

1500

The next amendment is a New Democratic Party amendment to subsections 11.2(8) and (9).

Mrs Caplan: What page?

The Chair: Page 100.

Shall the amendment carry? Same vote?

The amendment is defeated.

Shall section 7 carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: Section 7 carries.

Shall section 8 carry? Same vote?

Section 8 carries.

Section 9: The first amendment is a government amendment on page 101. It amends clause 14(1)(c). Shall the amendment carry?

Mrs Caplan: Which page is that one on?

The Chair: Page 101. Same vote?

Mrs Caplan: Just hold it a minute, please.

The Chair: Same vote?

Mrs Caplan: Yes.

The Chair: The amendment carries.

The next amendment is a Liberal amendment amending clause 14(1)(c). Shall the amendment carry?

Ayes

Caplan, Lankin, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

Shall section 9, as amended, carry? Same vote reversed?

Section 9, as amended, carries.

Section 10: An amendment from the Liberals on page 103 amends subsection 17(3). Shall the amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, Phillips, Sampson, Silipo, Tascona, Young.

The Chair: The amendment carries unanimously.

Shall section 10, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: Section 10 carries.

Section 11: The first amendment is a Liberal amendment on page 104. It amends subsection 17.1(3). Shall the amendment carry?

Ayes

Caplan, Lankin, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

The next amendment on page 105 is the Liberal amendment that amends subsection 17.1(3.1). Shall the amendment carry? Same vote?

Mrs Caplan: Of this Liberal motion?

The Chair: Yes.

Ayes

Caplan, Lankin, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

The next amendment is a Liberal amendment on page 106 to subsection 17.1(4). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a government amendment to subsection 17.1(6) on page 107. Shall the amendment carry? Same vote reversed? The amendment carries.

The next amendment—

Mrs Caplan: I think it's out of order, contrary to what you've just passed.

The Chair: The next amendment, a Liberal amendment, is out of order.

The next amendment is on page 109. It's a Liberal amendment to subsection 17.1(8). Shall the amendment carry?

Ayes

Caplan, Lankin, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

The next amendment is a Liberal amendment on page 110, subsection 17.2(4). Shall the amendment carry? Same vote? The amendment is defeated.

Shall section 11, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Phillips, Silipo.

The Chair: The section carries.

The next section is section 12. The first amendment we will deal with is on page 111. It's a government amendment to subsections 18(2) to (7).

Mrs Caplan: I'd like to ask a question about this one. It was tabled yesterday as page 111. Is there any way that I can get a question asked from the ministry before we vote on this?

The Chair: I'm sorry, Ms Caplan, you cannot. Shall the amendment carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Phillips, Silipo.

The Chair: The amendment carries.

The next amendment, on page 113, is a Liberal amendment. It amends subsection 18(2), paragraph 5. Shall the amendment carry?

Ayes

Caplan, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

The next amendment is a New Democratic Party amendment. This is on page 114. It amends subsection 18(2.1). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a Liberal amendment to amend subsection 18(7). This is on page 116. Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a government amendment. It amends subsections 18.1(1) through (4). It's on page 117.

Mrs Caplan: This is also a new one. Can you hold just for a minute so we can have a minute to look at it?

Interjections.

The Chair: As I understand it, 115 was replaced by the new number 111.

Mrs Caplan: I thought we just passed 115.
1510

The Chair: They're asking how come we didn't deal with it, and it was replaced by the new number 111. So number 117 is where we are supposed to be. Shall the amendment carry?

Mrs Caplan: I have a problem because in the book that I have—this is not a question on the amendment but it's on my book. I have page 117. Then I have another page 117, then page 118 that says "new," then page 118, then 119 is new. Did we have 117, 118 and 119 all replaced? This is what it should look like. Can you give me a minute now to have a look at it?

Interruption.

Mrs Caplan: Thank you. I really appreciate your help. Got it. In that case, I would support it because it's the expedited MRC.

The Chair: Shall the amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, Phillips, Sampson, Silipo, Tascona, Young.

The Chair: The amendment carries unanimously.

The next amendment on page 120 is a Liberal amendment to subsection 18.1(3). This amendment is out of order because the section that it wants to—has been replaced. So it'll be withdrawn.

The next amendment is a government amendment that amends subsection 18.1(8). It's on page 121. Shall the amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Maves, Phillips, Sampson, Tascona, Young.

Nays

Silipo.

The Chair: The amendment carries.

The next amendment is a Liberal amendment to subsections 18.1(8) and (8.1).

Mrs Caplan: This is the same as the one we've just amended. This does what we wanted it to do and we voted for it. So we'll withdraw our amendment.

The Chair: The next amendment is a Liberal amendment to subsection 18.1(10). Shall the amendment carry?

Mrs Caplan: All this does is publish the information.

Ayes

Caplan, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

The next amendment, on page 124, is a Liberal amendment to subsection 18.1(11). Shall the amendment carry? Same vote. The amendment is defeated.

The next amendment is a government amendment to subsection 18.1(13). Shall the amendment carry? Same vote reversed. The amendment is carried.

The next amendment is a Liberal amendment to subsection 18.2(2.1), on page 126. Shall the amendment carry? Same vote reversed. The amendment is defeated.

Shall section 12, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Phillips, Silipo.

The Chair: Section 12, as amended, carries.

Shall section 13 carry? Same vote. Section 13 carries. Section 14.

Mrs Caplan: Mr Chairman, is there any way that I can ask the government why they would allow an appeal if it's the full committee but not an appeal for a single member?

The Chair: I'm sorry, Mrs Caplan. You can't.

Mrs Caplan: That question is not answered. There's no way I can ask that question?

The Chair: No, you cannot, Mrs Caplan.

The first amendment to section 14 is a government amendment, page 127. It amends paragraph 3 of subsection 20(1). Shall the amendment carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Phillips, Silipo.

The Chair: The amendment carries.

The next amendment is a Liberal amendment to subsection 20(1). Shall the amendment carry? Same vote, reversed? The amendment is defeated.

Shall section 14, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Phillips, Silipo.

The Chair: Section 14, as amended, carries.

There are no amendments to sections 15, 16 and 17. Shall sections 15, 16, and 17 carry? Same vote. Sections 15, 16 and 17 are carried.

Section 18. There's a Liberal amendment, page 129, which amends section 26.1. Shall the amendment carry?

Ayes

Caplan, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

Shall section 18 carry? Same vote, reversed. Section 18 carries.

Section 19, there is a Liberal amendment on page 130. It amends subsections 27.1(5) and (6). Shall the amendment carry?

Ayes

Caplan, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

Shall section 19 carry? Same vote, reversed. Section 19 carries.

Shall section 20 carry? Same vote. Section 20 carries.

Section 21. The first amendment is a Liberal amendment, on page 131. It amends subsection 29(1). Shall the amendment carry?

Ayes

Caplan, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

The next amendment is on page 133. It's an NDP amendment to subsections 29(1) and (2). Since it is identical to the amendment we just defeated, therefore it's out of order.

The next amendment is a government amendment to subsection 29(2), on page 132. Shall the amendment carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Phillips, Silipo.

Mrs Caplan: I'd like a question answered before I vote on this. I'd like to support it if I understood—they're striking out a clause. I want to know if they're striking it out because it's been changed and amended somewhere else. If that's the case, then I'll vote for this. If that's not the case, it's put here—

The Chair: Unfortunately, Mrs Caplan—

Mrs Caplan: I can't have that clarified by staff before I'm forced to vote?

The Chair: Sorry, Mrs Caplan.

Mrs Caplan: In that case I'll vote against it.

The Chair: The amendment is carried.

The next amendment is a government amendment, subsection 29(4), on page 134. Shall the amendment carry? Same vote. The amendment is carried.

Shall section 21, as amended, carry? Same vote. Section 21, as amended, carries.

1520

Section 22. There's a government amendment to subsection 29.1(2.1). It's on page 135.

Shall the amendment carry? Same vote. The amendment carries.

Shall section 22, as amended, carry? Same vote.

There's a new proposed section 22.1, the Liberal amendment on page 136. Shall the amendment carry?

Ayes

Caplan, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

We now move to section 23. The first amendment to section 23 is on page 137. It's a government amendment to subsection 29.2(2). Shall the amendment carry?

Mrs Caplan: On 123?

The Chair: On 137.

Mrs Caplan: I'll support that.

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Maves, Phillips, Sampson, Tascona, Young.

Nays

Silipo.

The Chair: The motion carries, the amendment carries.

The next amendment is a government amendment, it's on page 138 and it amends section 29.2.1. Shall the amendment carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Phillips, Silipo.

Mrs Caplan: Mr Chair, on a point of order: Since the questions we have asked have not been able to be answered, could the government please table the legal opinion they have that says this section is constitutional? I think it's wrong to be voting on something that may be unconstitutional. I'd like to see the legal opinion.

The Chair: That's not a point of order, Mrs Caplan. Shall section 23, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Phillips, Silipo.

The Chair: Section 23, as amended, carries.

Shall section 24 carry? Same vote. Section 24 carries.

Section 25. There was a Liberal amendment. It's on page 139. It amends subsections 29.4(9) to (11). Shall the amendment carry?

Ayes

Caplan, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

Shall section 25 carry? Same vote, reversed. Section 25 is carried.

Section 26. There's a Liberal amendment. It's on page 140. It amends subsection 29.5(8). Shall the amendment carry? Same vote, reversed.

Ayes

Caplan, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

Shall section 26 pass? Same vote, reversed. Section 26 carries.

Section 27 has a Liberal amendment. It's on page 141. It amends section 29.6. Shall the amendment carry?

Ayes

Caplan, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

Shall section 27 carry? Same vote, reversed. Section 27 carries.

Section 28 has a Liberal amendment. It's on page 142 and amends subsection 29.7(2). Shall the amendment carry?

Ayes

Caplan, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

Shall section 28 carry? Same vote, reversed. Section 28 carries.

Section 29. The first amendment is a government amendment to subsections 37(1) and (2). It's found on page 143. Shall the amendment carry? Same vote. The amendment carries.

The next amendment is a Liberal amendment to subsections 37(1) and (2), and it is out of order.

The next amendment is an NDP amendment to subsections 37(1) and (2), and it is also out of order.

The next amendment is a government amendment to section 37. It's on page 146. Shall the amendment carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: The amendment carries.

Shall section 29, as amended, carry? Same vote. Section 29, as amended, carries.

Section 30 has a government amendment. It's found on page 147. It amends subsection 37.1(6). Shall the amendment carry? Same vote. The amendment carries.

Shall section 30, as amended, carry? Same vote. Section 30, as amended, carries.

Section 31. The first amendment is a government amendment. It amends subsection 38(4) and is found on page 148.

Mrs Caplan: Could you give us a minute? I'll support that.

The Chair: Shall the amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, Phillips, Sampson, Silipo, Tascona, Young.

The Chair: The amendment carries unanimously.

The next amendment is a Liberal amendment to subsections 38(4) and (5). It is out of order.

The next amendment is an NDP amendment to subsections 38(4) and (5), which is also out of order.

Shall section 31, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: Section 31, as amended, carries.

Section 32 has an amendment from the government that amends subsections 39.1(2.1) and (2.2). It's found on page 151. Shall the amendment carry?

Mrs Caplan: I would like to support this one if I could understand the reason why they wouldn't allow a review where it's by a single member.

1530

The Chair: I'm sorry, Mrs Caplan.

Shall the amendment carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: The amendment carries.

The next amendment is a government amendment to subsection 39.1(3). It's found on page 152. Shall the amendment carry? Same vote? The amendment is carried.

The next amendment is a government amendment. It amends subsection 39.1(4). It's found on page 153. Shall the amendment carry? Same vote? The amendment's carried.

Shall section 32, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Phillips, Silipo.

The Chair: Section 32, as amended, carries.

Section 33, the government amendment to subsection 40(1), as found on page 154. Shall the amendment carry?

Interjections.

Mrs Caplan: Can anybody stop this railroad long enough to tell me what page number we're on?

The Chair: Page 154. Shall the amendment carry? Same vote? The amendment's carried.

The next amendment is a government amendment that

amends subsection 40(2). It's found on page 155. Shall the amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Maves, Phillips, Sampson, Silipo, Tascona, Young.

The Chair: The amendment carries unanimously.

The next amendment is a government amendment that amends subsection 40(4). It's found on page 156. Shall the amendment carry? Same vote? The amendment carries unanimously.

The next amendment is a New Democratic Party amendment found on page 157 that amends subsection 40(6). Shall the amendment carry?

Ayes

Caplan, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

The next amendment is a government amendment found on page 158. It amends paragraphs 3, 5 and 6 of subsection 40.1(1). Shall the amendment carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Phillips, Silipo.

The Chair: The amendment is defeated. The next amendment is found on page 159. It's a government amendment. It amends subsection 40.1(1.1). Shall the amendment carry?

Mrs Caplan: It's not in my book. Can I have a copy of the amendment before I'm asked to vote on it or is that also an unreasonable request?

Mr Chairman, could I make a request as a point of order? Could you slow down enough that if we can't ask the question on the record, we could privately get an answer so that we could decide whether or not to support a government amendment? Is that an unreasonable—I'm not saying put it on the record, just to hold for a minute while we quietly get it so we can decide how to vote. There's nothing to say you have to go at this speed in the directions from the House leader.

The Chair: I put the questions. That's the job I have to do.

Mrs Caplan: But it is reasonable that we ask you just to hold it for a minute while we privately get a question answered so that we can decide if we are able to support something from the government.

The Chair: Page 159. Excuse me. The previous amendment was carried. I said it was defeated.

Page 159, a government amendment. Shall the amendment carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Phillips, Silipo.

The Chair: The amendment is carried. The next amendment is a Liberal amendment on page 160. It amends subsection 40.2(8). Shall the amendment carry? Same vote reversed? The amendment is defeated.

Shall section 33, as amended, carry? Same vote reversed?

Mr Clement: Same vote reversed, please.

The Chair: Section 33, as amended, carries.

Section 34: The first amendment on page 161 is a government amendment. It amends subsection 34(1), clause 45(1)(e.1).

Mrs Caplan: I do not have 161 in my book. It's not here.

Interjection.

Mrs Caplan: Thank you.

The Chair: Shall the amendment carry?

Ayes

Clement, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Phillips, Silipo.

The Chair: The amendment carries.

The next amendment, found on page 162, is a government amendment that amends subsection 34(3), clause 45(1)(bb). Shall the amendment carry? Same vote? The amendment is carried.

The next amendment is a Liberal amendment, found on page 163. It amends subsection 34(5), subsection 45(1.1). Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is a Liberal amendment that amends subsection 34(6), clauses 45(1.1)(k) to (m), found on page 164. Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a government amendment on page 165. It amends subsection 34(7), subsection 45(1.2). Shall the amendment carry? Same vote reversed? The amendment is carried.

The next amendment is a Liberal amendment that amends subsection 34(8), subsection 45(3.2.1). Shall the amendment carry? Same vote reversed? The amendment is defeated.

Shall section 34, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Phillips, Silipo.

The Chair: Section 34, as amended, carries.

There's a proposed new section 34.1 from a Liberal amendment found on page 167. Shall the Liberal amendment carry?

Ayes

Caplan, Phillips, Lankin, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona.

The Chair: The amendment is defeated.

Section 35: The first amendment is a government amendment, found on page 168. It amends subsection 35(1), subsection 2(1). Shall the amendment carry?

Ayes

Clement, Ecker, Caplan, Hardeman, Johns, Phillips, Lankin, Maves, Sampson, Silipo, Tascona.

The Chair: The amendment carries unanimously.

The next amendment is the Liberal amendment found on page 169. It amends subsection 35(2), subsection 2(3) of the act. Shall the amendment carry?

Ayes

Caplan, Phillips, Lankin, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona.

The Chair: The amendment is defeated.

The next amendment is an NDP amendment that amends subsection 35(2), subsection 2(3) of the act.

Ms Lankin: It was withdrawn two days ago.

The Chair: It's been withdrawn.

Shall section 35, as amended, carry?

1540

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: Section 35, as amended, carries.

Section 36: There is a government amendment found on page 172. It amends section 6.1. Shall the amendment carry?

Mrs Caplan: Could we have a minute on this one?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, Sampson, Silipo, Tascona.

Nays

Phillips.

The Chair: The amendment carries.

Shall section 36, as amended, carry? Agreed. Section 36, as amended, carries.

Section 37 has a government amendment that is out of order. Shall section 37 carry?

Nays

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, Phillips, Sampson, Tascona, Silipo.

The Chair: Section 37 does not carry.

Section 38 has no amendments. Shall section 38 carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: Section 38 carries.

Section 39: There's a government amendment on page 175. It amends subsections 9(1) and (2). Shall the amendment carry?

Ms Lankin: Mr Chair, there was a replacement for this, was there not? I'm missing that. I did have it at one point in time, I know, but I'm missing that. Could you give me just a moment, please.

Mrs Caplan: This is the new 175 that we're voting on.

The Chair: Shall the amendment carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: The amendment carries.

The next amendment is an NDP amendment to subsection 9(2) that is out of order.

The next amendment is a Liberal amendment to subsection 9(3) found on page 177.

Ms Lankin: Why was the motion out of order?

Mrs Caplan: It referred to the Canada Health Act.

Ms Lankin: As I understand it, it's not contradictory to the motion that we just passed. What it does do is suggest that it has to be done in accordance with the Canada Health Act. Surely, that would be in order.

The Chair: The section that you wanted to amend with those words, Ms Lankin, has been struck out.

Ms Lankin: Well, I want to put it back in.

The Chair: Some other day.

Ms Lankin: I find your attitude less than helpful.

The Chair: The next amendment is on page 177. It's a Liberal amendment to—I guess I just called it—subsection 9(3). Shall the amendment carry?

Ayes

Caplan, Lankin, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona.

The Chair: The amendment is defeated.

The next amendment is an NDP amendment, page 178, also amending subsection 9(3). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a Liberal amendment amending subsection 9(4). It's on page 179. Shall the amendment carry? Same vote? The amendment is defeated.

Shall section 39, as amended, carry? Same vote reversed? Section 39, as amended, carries.

Shall section 40 carry? Same vote? Section 40 carries.

Shall schedule H, as amended, carry? Same vote? Schedule H, as amended, carries.

Schedule I, the Physician Services Delivery Management Act. There are no amendments to sections 1, 2, 3 and 4. Shall sections 1 through 4 carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: Sections 1 through 4 are carried.

Shall schedule I carry? Same vote? Schedule I is carried.

Schedule J, amendments to the Pay Equity Act. Shall sections 1 and 2 carry? Same vote? Sections 1 and 2 are carried.

Section 3. The first amendment, from the government, is on page 181. It amends subsection 21.22(2.1). Shall the amendment carry? Same vote?

Ayes

Clement, Ecker, Hardeman, Johns, Lankin, Maves, Sampson, Silipo, Tascona.

Nays

Caplan, Phillips.

The Chair: The amendment carries.

The next amendment is a government amendment, on page 182. It amends subsection 21.22(3.1). Shall the amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, Phillips, Sampson, Silipo, Tascona.

The Chair: The amendment carries unanimously.

The next amendment is an NDP amendment that amends subsections 21.22(3.1) and (3.2). That amendment is out of order.

Mr Silipo: Mr Chair, why is it out of order?

The Chair: Because of the amendment we just voted on.

Mr Silipo: The amendment we just voted on was just a technical one, just corrects some wording errors, so how could this amendment be out of order?

The Chair: I stand corrected. It is not out of order.

On page 183, the NDP amendment to subsections 21.22(3.1) and (3.2), shall the amendment carry?

Ayes

Caplan, Lankin, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona.

The Chair: The amendment is defeated.

Shall section 3, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: Section 3, as amended, carries.

1550

There are no amendments to sections 4 through 8. Shall sections 4 through 8 carry? Same vote? Sections 4 through 8 carry.

There's a proposed new section 8.1 in an NDP amendment, page 184. Shall the amendment carry? Same vote reversed? The amendment is defeated.

Section 9, no amendments. Shall section 9 carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: Section 9 carries.

Shall section J, as amended, carry? Same vote? Section J, as amended, carries.

Mrs Ecker: It's schedule J.

The Chair: Schedule J, as amended, carries. I'm glad to see everybody is so on top of this.

Mrs Ecker: We're right on the ball, Mr Chair.

The Chair: Schedule K, amendments to the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

Ms Lankin: When are we going to take that 20-minute break?

The Chair: Whenever anybody asks for it. I'm at your discretion. Technically, it needs to be asked at the point I'm going to ask a question on a vote. Ask whenever you want; I don't care.

Ms Lankin: Mr Chair, I'm going to deem that you are asking us if we want to vote on this.

The Chair: Are you requesting a 20-minute recess?

Ms Lankin: No, I'm not, actually.

The Chair: Schedule K. There's a Liberal amendment, page 186, that amends section 10.

Ayes

Caplan, Lankin, McLeod, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

The next is an NDP amendment that is identical; therefore it is out of order.

Shall section 1 carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Phillips, Silipo.

The Chair: Section 1 carries.

Section 2. There's a Liberal amendment that amends subsection 24(1.1). It's on page 188. Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment, on page 189, is out of order.

Ms Lankin: Why?

The Chair: It's the same intent as the amendment we just defeated.

Ms Lankin: Mr Chair, it would be helpful if you would give the reasons; for example, that it's not out of order because it was inappropriately drafted, but because we just passed an amendment which had the same intent.

Mrs Johns: That's what he said.

Ms Lankin: After we asked the question, he said that. I'm just wondering if he would give the reasons as he rules it out of order so we don't have to interject each time.

The Chair: I'm just a little slow with my explanation.

Mr Silipo: Don't you think a 20-minute break might help?

The Chair: Shall section 2 carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Phillips, Silipo.

The Chair: Section 2 carries.

Shall section 3 carry? Same vote? Section 3 is carried.

Section 4. The first amendment is a Liberal amendment that amends section 27.1, page 190. Shall the amendment carry? Same vote reversed? The amendment is defeated.

Because the next amendment is identical to the one we just defeated, it is out of order.

Ms Lankin: Thank you.

Mr Phillips: Why don't you just say it's out of order? It'll speed things up.

The Chair: You want me to forget about the long explanations?

Shall section 4 carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Phillips, Silipo.

The Chair: Section 4 is carried.

Section 5. A Liberal amendment that amends subsection 28(2.1), page 192. Shall the amendment carry? Same vote reversed? The amendment is defeated.

Because the next amendment is identical to one we just defeated, it is out of order.

Shall section 5 carry? Same vote reversed? Section 5 is carried.

Section 6. The first amendment is a Liberal amendment that amends subsection 29(3.1), page 194. Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment, because it duplicates the one we just defeated, is out of order.

Shall section 6 carry? Same vote reversed? Section 6 carries.

The proposed new section 6.1, put forward in a Liberal amendment, page 197. Shall the amendment carry? Same vote reversed? The amendment is defeated.

Section 7. An amendment put forward by the Liberals found on page 198 amends subsection 48(1). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment, put forward by the NDP, since it is a duplicate of the amendment already defeated is out of order.

Shall section 7 carry? Same vote reversed? Section 7 carries.

Section 8. The first amendment, page 200, is a Liberal amendment that amends subsection 50(1.1). Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is found on page 201, a Liberal amendment that amends subsection 50(1.1). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment, put forward by the New Democratic Party, is the same as the first Liberal amendment and therefore is out of order.

Mrs Caplan: Page number?

The Chair: Pages 200 and 202.

Shall section 8 carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Phillips, Silipo.

The Chair: Section 8 carries.

Shall section 9 carry? Same vote? Section 9 carries.

Shall section 10 carry? Same vote? Section 10 is carried.

Section 11. The first amendment is a Liberal amendment, page 203, that amends subsection 11(1), clause 57(1)(a).

Mrs Caplan: They're going to support this because it's very reasonable.

The Chair: Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is an identical amendment by the New Democrats, therefore it is out of order.

1600

The next amendment is a Liberal amendment found on page 205. It amends subsection 11(1), subsection 57(1). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment, for the same reason that it's similar to the motion we just defeated, is out of order.

The next amendment is a Liberal amendment. It amends subsection 11(2), subsection 57(4). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a New Democratic amendment similar to the amendment we just defeated, therefore it's out of order.

The next amendment, page 209, is a Liberal amendment. It amends subsection 11(3), subsection 57(5). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a New Democratic Party amendment similar to the one we just defeated, therefore it's out of order.

Ms Lankin: Mr Chair, I just want you to know that we are doing this to facilitate the speed with which we can deal with these because we're actually now dealing with them two at a time, if you've noticed.

The Chair: Shall section 11 carry? Same vote reversed? Section 11 carries.

Section 12: The first amendment is a Liberal amendment. It amends subsection 12(1), clause 60(1)(0.a) found on page 211. Shall the amendment carry? Same vote reversed? The amendment is defeated.

Can I just say "ditto," Ms Lankin?

Ms Lankin: Yes.

The Chair: The next amendment is out of order.

The next amendment, Liberal amendment on page 213, amends subsection 12(2), clause 60(1)(g). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is another Liberal amendment. It amends subsection 12(2), clause 60(1)(g). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment, an NDP amendment, is a duplicate of one we've already passed, therefore it is out of order.

Shall section 12 carry? Same vote reversed?

Section 12 carries.

Section 13: The first amendment on page 216 is a Liberal amendment that amends section 4. Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is an NDP amendment which serves the same purpose as the one we just defeated, therefore it is out of order.

Shall section 13 carry? Same vote reversed?

Section 13 carries.

The next section is section 14. The first amendment is a Liberal amendment found on page 218. It amends

subsection 17(1.1). Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is a New Democratic Party amendment. It duplicates the amendment we just defeated, therefore it is out of order.

Shall section 14 carry? Same vote reversed?

Section 14 carries.

Shall section 15 carry? Same vote?

Section 15 carries.

Section 16: The first amendment found on page 220 is a Liberal amendment. It amends section 20.1. Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is an NDP amendment which, because it's a duplicate of one we already defeated, is out of order.

Mr Silipo: You'll notice that the typeface is bold on this one.

The Chair: Yes, I did.

Shall section 16 carry? Same vote reversed?

Section 16 carries.

Section 17: The first amendment is a Liberal amendment. It amends subsection 21(2.1), found on page 222. Shall the amendment carry? Same vote reversed?

The amendment is defeated.

The next amendment is an NDP amendment similar to the one we already defeated. Therefore, it is out of order.

Mrs Caplan: What page, Mr Chair?

The Chair: Page 222.

Ms Lankin: I just want to make sure I'm following the right section with you. All of these duplicates are all of the ones that are the exact recommendations of the privacy commissioner that both the Liberals and the New Democrats have put in. That's why they're all—

The Chair: Yes, they are, Ms Lankin.

Ms Lankin: Okay, I just wanted to make sure I was with you on which ones we were dealing with.

The Chair: Shall section 17 carry? Same vote reversed? Section 17 carries.

Section 18, the first amendment, found on page 224, is a Liberal amendment. It amends subsection 22(3.1). Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is an NDP amendment, a duplicate of the one we just defeated, therefore it is out of order.

Shall section 18 carry? Same vote reversed? Section 18 carries.

Mrs Caplan: There is another, motion 224.

The Chair: Section 18.1.

Mrs Caplan: No, Mr Chairman, on page 224, did you call for that amendment?

The Chair: Yes, I did.

Mrs Caplan: Mr Chairman, while you're reading, if the government would answer whether they are prepared to accept any of the opposition amendments, maybe in the interests of speed we could just hear from them that they're not going to support anything; they haven't supported anything the freedom of information commissioner recommended. I mean, if they're not going to support anything, just deem them all, we might as well all just pack up and go home.

We've just seen them not accept anything that was recommended by the privacy commissioner and, frankly, I'm getting fed up, so I'd like to know, is there any intention of the government to support any opposition motion from now until the end of this bill? If they could answer that one question, it would tell me whether I'm wasting my time or not.

The Chair: Ms Caplan and Ms Lankin have to be part of this discussion—are you asking for unanimous consent that all opposition amendments be defeated and all government amendments be approved?

Mrs Caplan: No, what I'd like to know is whether or not the government has any intention whatever of accepting any opposition motion. If they're not, I'm leaving; I'm going home. What's the point of sitting here?

The Chair: The answer is yes.

Mrs Caplan: Yes? In that case, I'm happy to stay and watch this railroad. I'm waiting to see which one.

Interjections.

The Chair: There's a new section 18.1 by the Liberals, amendment 226. Shall the amendment carry?

Mrs Caplan: Is this the one?

Interjections: No.

The Chair: Shall the amendment carry? Same vote reversed? The amendment is defeated.

Section 19, the first amendment is a Liberal amendment. It amends subsection 37(1), found on page 228.

Shall the amendment pass? Same vote? The amendment is defeated.

The next amendment is an NDP amendment very similar to the one we just defeated, therefore it's out of order.

Ms Lankin: It's not exactly the same.

The Chair: I said very similar that time.

Shall section 19 carry? Same vote reversed? Section 19 carries.

Section 20, the first amendment is the Liberal amendment that amends subsection 39(1.1). It's found on page 230. Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is an NDP amendment. For the reasons stated above, because it's a duplicate, it's ruled out of order.

The next amendment, found on page 231, is a Liberal amendment. It's been withdrawn.

The next amendment is a Liberal amendment that amends subsection 39(1.1). It's found on page 232. Shall the amendment carry?

1610

Mrs Caplan: No? I figured that was the one. I thought that was the one you were going to—

The Chair: Same vote? The amendment is defeated.

Mrs Caplan: You should have liked that one.

The Chair: Shall section 20 carry? Same vote reversed?

Section 20 is carried.

There are no amendments to sections 21 and 22. Shall sections 21 and 22 carry? Same vote?

Sections 21 and 22 are carried.

Section 23. The first amendment to section 23 is a Liberal amendment. It amends subsection 23(1), clause 45(1)(a). It's found on page 233. Shall the amendment

carry? Same vote reversed? The amendment is defeated.

The next amendment is a New Democratic Party amendment, a duplicate of the one we just defeated, therefore it's out of order.

The next amendment is a Liberal amendment found on page 235. It amends subsection 23(1), subsection 45(1). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is an NDP amendment, out of order because of a duplication with the previous amendment that was defeated.

The next amendment is a Liberal amendment found on page 237. It amends subsection 23(2), subsection 45(4). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is an NDP amendment. It amends subsection 23(2), subsection 45(4). It's found on page 238. It is out of order because of duplication.

The next amendment is a Liberal amendment found on page 239. It amends subsection 23(3), subsection 45(5). Shall the amendment carry? Same vote? The amendment is defeated.

The next NDP amendment is a duplication, therefore it is out of order.

Ms Lankin: Mr Chair, I know you're just speaking shorthand, but I just want to clarify. It's not out of order because it's the same as the previous amendment, it's out of order because a previous amendment that it's similar to was defeated. Therefore, there's no sense in voting on it again. Is that the reason why it's out of order?

The Chair: Correct.

Ms Lankin: I just want to make sure that we're correct.

The Chair: They are out of order—

Ms Lankin: Because, you know, it sounds like a whole lot of the NDP amendments are out of order, the way we're going here. I just want people to realize that we spent a lot of time on these and it's because they are similar to other areas—

The Chair: They are out of order because they have a similar intent to an amendment that was previously defeated.

Ms Lankin: Great. Thank you.

The Chair: Thank you for clarifying that for us. Shall section 23 carry? Same vote reversed? Section 23 carries.

Section 24. The first amendment is a Liberal amendment. It amends subsection 24(1), clause 47(1)(0.a). Page 241. Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment which the NDP party worked on very hard—

Interjections.

The Chair: —which the New Democrats worked on very hard is out of order because the previous amendment put forward by the Liberals has been defeated.

Mrs McLeod: Believe it or not, there was no collusion in drafting the amendment. It just reflects the fact that we were listening to the concerns.

The Chair: The next amendment, page 243, is the Liberal amendment that amends subsection 24(2), clause 47(1)(f). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a Liberal amendment that amends subsection 24(2), clause 47(1)(f). It's found on page 244. Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is an NDP amendment and again, despite their hard work, it does duplicate a previous amendment, therefore is out of order.

Shall section 24 carry? Same vote reversed?

Section 24 is carried.

Shall section 25 carry? Same vote?

Section 25 carries.

Shall schedule K carry? Same vote?

Mrs Caplan: I'd like a recorded vote.

Ms Lankin: Recorded vote.

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Phillips, Silipo.

The Chair: Schedule K carries.

Schedule L, Amendments to the Public Service Pension Act and the Ontario Public Service Employees' Union Pension Act.

Interjections.

The Chair: There are no amendments to sections 1, 2 and 3. Shall sections 1, 2 and 3 carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Phillips, Silipo.

The Chair: Sections 1, 2 and 3 are carried.

Shall schedule L carry? Same vote.

Mrs McLeod: Let's make sure they know what they just did, Mr Chair. Do you know the name of schedule?

The Chair: Schedule L carries.

Mrs Caplan: Did you read that out, Mr Chairman?

The Chair: Yes, I did. Should we go on to schedule M?

Mr Clement: I request a 20-minute recess.

The Chair: Unanimous consent for a 20-minute recess?

Ms Lankin: No.

The Chair: We need unanimous consent—

Mrs McLeod: Unless you're prepared to reconsider the last vote.

Mr Clement: There's only one 20-minute recess, right?

The Chair: Yes, there's only one.

Mr Clement: But they don't want to recess.

Ms Lankin: You told us earlier you needed unanimous consent.

The Chair: There's availability in the thing for one 20-minute recess. Anybody can ask for it. We don't need unanimous consent.

Mrs Caplan: Oh, you said you did.

The Chair: I'm just semi-requesting it. If not, we'll carry on.

Mrs Caplan: Right. Carry on.

The Chair: We're now on schedule M. Amendments—

Mrs Caplan: Don't ask questions. No clarification.

The Chair: Mrs Caplan.

Mrs Caplan: I'm getting angry again, Mr Chairman.

The Chair: And I'm getting tired.

Mrs Caplan: Well, I'm angry.

The Chair: We're now on schedule M.

Mrs McLeod: Mr Chairman, we may all be getting frustrated and tired, but what—

The Chair: Amendments to the Municipal Act and Various Other Statutes related to Municipalities, Conservation Authorities and Transportation.

Ms Lankin: Mr Chair, I'm looking for a point of information. The government members indicated that there was an opposition amendment that they were prepared to support. Perhaps they'd like to tell us where that is. It certainly isn't in one of the areas that we just passed, like the stealing of money from public pensions that we believe really strongly about. Maybe you'd tell us what schedule it's in, where it is.

Mrs Caplan: That's exactly what you're doing. You're not going to get away with this stuff. You're going to be challenged in the courts. It's going to cost you a fortune.

Mrs Ecker: We don't have to answer that.

Mr Clement: This is not question period, Mr Chairman.

Interjections.

The Chair: Ms Lankin—

Mr Clement: So what was the purpose of your asking?

The Chair: Ms Lankin.

Interjections.

The Chair: Let's return just a little bit of order to the proceedings. We've been reasonably dignified up till now. I'd hate to see us lose it totally. Is there a particular purpose for your question? Did you have something, Ms Lankin?

Ms Lankin: Yes. I asked the question and I wanted the information so that we could determine procedurally whether or not we continue this process for the next four or five schedules that are left to vote on of simply the government carrying every one of their amendments and defeating every one of the opposition amendments.

If there's only one that you intend to vote on in favour of an opposition amendment, why don't you indicate where it is? We can deal with that one, and then you can simply deem the rest of the sections and subsections to be passed. Quite frankly, this is not a useful process at this point in time. There's no give and take going on any more. I was just trying to be of assistance procedurally.

Mr Clement: I recognize that and I thank you for being of assistance. If the Liberal members of the committee have the same attitude to this, then certainly—

Mrs Caplan: We would be very happy to hear from you what you're going to support.

The Chair: According to what I'm told, the question is moot because we are obligated to vote on every section.

Mrs Caplan: We could deem them all, Mr Chairman. Everything else has been deemed.

Mr Silipo: Is it not possible, if we agreed to take the rest as one vote?

The Chair: We'll have a five-minute recess while I see whether or not we can do that.

The committee recessed from 1623 to 1630.

The Chair: I don't have a lot of answers. Because of the decisions we made at the beginning to have recorded votes on everything, we can't really go back and change that.

The only thing we can do to speed up the process would be if all of the opposition amendments were withdrawn. In that particular case then everything would at least be a yes vote, it would be one vote and it would be easy to go through. Other than that, there's nothing I've been able to come up with that would speed the process up.

Ms Lankin: Thank you very much, and I appreciate your ruling. I want to make it clear that my request for information about the procedure was not to speed things up; it was because of the level of frustration in the room that the opposition felt.

I have to inform the committee that I have no intention of withdrawing our proposed amendments. Those are there because we believe the bill is flawed and they need to be voted on. It's unfortunate that with the exception of one, it would appear that the government members will defeat them all.

But I just want to make it clear that it has nothing to do with time, because I'm prepared to stay here. I was prepared, as you know, to continue the public hearings and to continue the clause-by-clause process. I appreciate you, however, checking into that.

Perhaps the few minutes and/or a judicious use of the 20-minute break at some point would allow people to recoup and regain their tempers. I just think the level of frustration in the room was getting to a point where in fact it was quite destructive to the committee process.

The Chair: Okay. So we're into schedule M. The first amendment in schedule M is a government amendment that amends subsection 25.2(1). It's on page 247. Shall the amendment carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Phillips.

The Chair: The amendment carries.

The next amendment is a Liberal amendment that amends subclauses 25.2(2)(b)(i) and (ii), found on page 247A. Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is a government amendment that amends subsection 25.2(4). Shall the amendment carry? Same vote reversed? The amendment is carried.

The next amendment is a Liberal amendment that amends subsection 25.2(5.1). Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is a Liberal amendment that amends clause 25.2(9)(c). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a Liberal amendment that amends subsections 25.2(11) to (13). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a government amendment that amends subsection 25.2(13) on page 249. Shall the amendment carry? Same vote reversed? The amendment is carried.

The next amendment is a Liberal amendment that amends subsection 25.3(1). Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is a Liberal amendment that amends subsection 25.3(3). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a Liberal amendment that amends clause 25.3(7)(g). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a Liberal amendment that amends subsection 25.3(8.1). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a government amendment that amends subsections 25.3(1) to (4). Shall the amendment carry? Same vote reversed? The amendment is carried.

The next amendment is a New Democratic Party amendment that amends section 25.3. Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is a New Democratic Party amendment that amends subsections 25.3(6.1) to (6.3). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a government amendment that amends subsection 25.3(8.1). Shall the amendment carry?

Mrs McLeod: More powers to the minister; this one will carry.

The Chair: Same vote reversed?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Phillips, Silipo.

The Chair: The amendment is carried.

Shall section 1, as amended, carry? Same vote? Section 1, as amended, carries.

Section 2, the first amendment is a Liberal amendment that amends subsection 83.1(2.1). Shall the amendment carry?

Mrs McLeod: What page number please, Mr Chairman?

The Chair: Page 255A.

Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is a Liberal amendment that amends subsections 83.1(5) and (6). Shall the amendment carry? Same vote? The amendment is defeated.

Shall section 2 carry? Same vote reversed? Section 2 carries.

Shall sections 3, 4 and 5 carry? Same vote? Sections 3, 4, and 5 are carried.

Section 6, the first amendment, on page 256, is a New Democratic Party amendment that amends subsection 209.2(1.1). Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is an NDP amendment that amends clause 209.2(2)(b.1). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a Liberal amendment that amends clauses 209.4(1)(a) and (b). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is an NDP amendment that amends subsection 209.4(1.1). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a Liberal amendment that amends subsection 209.5(3). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a Liberal amendment that amends subsection 209.6(1). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a Liberal amendment that amends subsection 209.6(3). Shall the amendment carry? Same vote? The amendment is defeated.

Shall section 6 carry? Same vote reversed? Section 6 carries.

Shall section 7 carry? Same vote? Section 7 carries.

Section 8: The first amendment is a government amendment found on page 259, that amends subsection 210.4(1). Shall the amendment carry? Same vote? The amendment carries.

The next amendment is a Liberal amendment that amends subsection 210.4(1). It's inconsistent with the amendment we just passed; therefore, it is out of order.

Mrs McLeod: Page number, please, Mr Chairman?

The Chair: Page 259A.

Mrs Caplan: Page 259A?

The Chair: Yes, A.

Mrs Caplan: And the reason that's being ruled out of order, Mr Chairman?

The Chair: It's inconsistent with the amendment we just passed.

Mrs McLeod: The only difference, just for clarification, then, is that we also think boards of health should not be dissolved by municipalities.

Mrs Caplan: Why is that inconsistent?

Mrs McLeod: That's a very different amendment.

Interjections.

Mrs McLeod: Mr Chairman, that's a very significant difference.

The Chair: That amendment specifically mentions two boards—

Mrs McLeod: The government amendment specifically mentions police services boards, school boards, conservation authorities. Our following amendment indicates that basically a municipality shall not be able to dissolve a school board, a board of health or a police services board. A board of health is a significant addition to that government amendment and we believe an important one, although I know that this government wants municipalities to be able to even dissolve boards of health, so they may not support it.

1640

Mrs Caplan: And the rest of it is consistent with—

Mr Silipo: Mr Chair, while you're dealing with that, you'll note that there's an NDP amendment which goes further than that and includes all of those mentioned plus library boards. So these are really amendments that are different.

The Chair: I'm not going to argue the point with you. We'll vote on it.

Liberal amendment 259A, subsection 210.4(1). Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is an NDP amendment that amends subsection 210.4(1). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a Liberal amendment that amends subsection 210.4(3.1). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a Liberal amendment that amends subsection 210.4(7). Shall the amendment carry? Same vote? The amendment is defeated.

Shall section 8, as amended, carry? Same vote reversed? Section 8, as amended, carries.

Shall section 9 carry? Same vote? Section 9 carries.

Section 10, the first amendment is a government amendment, found on page 260C(i), amends subsection 210.1(1). Shall the amendment carry? Same vote? The amendment carries.

The next amendment is a government amendment that amends subsection 220.1(1), found on page 260C(ii). Shall the amendment carry? Same vote? The amendment carries.

We're on page 261A, the Liberal amendment that amends subsection 220.1(2). Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is a government amendment that amends subsections 220.1(2.1) to (2.3) found on page 262. Shall the amendment carry? It's already been carried.

The next amendment is a Liberal amendment that amends subsection 220.1(2.1), page 263A. Shall the amendment—

Interjections.

The Chair: We could argue for a while whether it is or isn't out of order, so we'll say it is in order.

Shall the amendment on 263A pass? The same vote reversed? The amendment is defeated.

The next amendment is a Liberal amendment that amends subsection 220.1(2.2). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a Liberal amendment that amends clause 220.1(3)(a). Shall the amendment carry?

Interjections.

Mrs Ecker: I can't hear you.

The Chair: The next amendment on page 263C is a Liberal amendment that amends clause 220.1(3)(a). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a Liberal amendment on page 263D that amends subsection 220.1(3.1). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment has already been defeated.

The next amendment is a Liberal amendment on page 264A, an amendment to subsection 220.1(9). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a Liberal amendment that amends subsection 220.1(12), found on page 264B. Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a Liberal amendment that amends subsection 223(2), found on page 264C. Shall the amendment carry? Same vote?

Mrs Caplan: I want a recorded vote on 264C, because this was what they promised in the election. I can't believe they're going to vote against it.

Ayes

Caplan, Lankin, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: Shall section 10, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: Section 10, as amended, carries.

Shall section 11 carry? Same vote? Section 11 carries.

There are no amendments to sections 12 through 21. Shall sections 12 through 21 carry? Same vote? Sections 12 through 21 carry.

Section 22. There's a government amendment, page 265, that amends subsection 257.1(1). Shall the amendment carry? Same vote? The amendment is carried.

The government has an amendment, page 266, that amends subsection 257.1(1). Shall the amendment carry? Same vote? The amendment carries.

The next amendment is a Liberal amendment, 266A, that amends subsection 257.2(1). Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is a government amendment to subclause 257.2(2)(f)(i). Shall the amendment carry?

Mr Phillips: Mr Chair, on a point of information; Just so I'm not lost, on page 267—

The Chair: That's the one we're doing right now.

Mr Phillips: Okay. I just wanted to be sure we're all right there.

The Chair: Shall the amendment carry? Same vote reversed? The amendment carries.

The next amendment is a Liberal amendment to subclause 257.2(2)(f)(i). It is identical to the government amendment; therefore it is out of order.

The next amendment is a government amendment to subsection 257.2(2.1). Shall the amendment carry? Same vote? The amendment carries.

The next amendment is a Liberal amendment to subsection 257.2(2.1). Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is an amendment to subsections 257.2(2.1), (2.2) and (2.3). Shall the amendment carry? Same vote? The amendment is defeated.

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The next amendment is a Liberal amendment to subsection 257.2(2.2). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a Liberal amendment to section 257.3. Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a Liberal amendment to subsection 257.5(4). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a government amendment to section 257.7. Shall the amendment carry? Same vote reversed? The amendment carries.

Mrs Caplan: What page are we on?

The Chair: Page 270A.

The next amendment is a Liberal amendment.

Mrs Caplan: This is the one. I bet this is it.

The Chair: It amends section 257.7. Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is an NDP amendment to section 257.7. Shall the amendment carry? Same vote? The amendment is defeated.

Shall section 22, as amended, carry? Same vote reversed? Section 22, as amended, carries.

Shall sections 23 and 24 carry? Same vote? Sections 23 and 24 carry.

Section 25. A Liberal amendment on page 271A amends subsections 1.1(1) and (1.1). Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is an NDP amendment on page 272. Shall the amendment carry? Same vote? The amendment is defeated.

Shall section 25 carry? Same vote reversed? Section 25 carries.

A new section 25.4, a government amendment, page 273. No?

Mrs Caplan: We're not going to support that.

The Chair: That has been withdrawn.

There are no amendments in sections 26 through section 30. Shall section 26 through section 30 carry?

Ms Lankin: Mr Chair, a question. I'm sorry, there was an amendment to section 25.4. Has that been withdrawn?

The Chair: That has been withdrawn.

Mrs Caplan: That was a government amendment.

The Chair: Shall sections 26 through 30 carry? Same vote? Sections 26 through 30 carry.

Section 31. There's a government amendment to subsection 2(1), page 273. Shall the amendment carry? Same vote? The amendment carries.

Mrs Caplan: Without asking questions we cannot support these. If we understood what it was you were trying to accomplish, if you could answer a simple question, we might be able to support some of these. But

without even being able to stop this bulldozing to be able to ask a question—

The Chair: The next amendment is a government amendment to subsection 3(1) found at page 275. Shall the amendment carry? Same vote? The amendment carries.

The next amendment is a government amendment found on page 276, subsection 3(4). Shall the amendment carry?

Interjection: Where's page 274?

The Chair: Page 274 has been withdrawn.

Shall the government amendment on page 276 that amends subsection 3(4) carry? Same vote? The amendment carries.

Shall the Liberal amendment found on page 276A to amend section 3 carry? Same vote reversed? The amendment is defeated.

Shall section 31, as amended, carry? Same vote reversed? Section 31, as amended, carries.

Shall section 32 carry? Same vote? Section 32 carries.

Section 33. There's a Liberal amendment found on page 276B, subsection 67(1). Shall this amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is found on page 277 and it's an NDP amendment. Shall the amendment carry? Same vote? The amendment is defeated.

Shall section 33 carry? Same vote reversed? Section 33 is carried.

A government amendment adding section 33.1 on page 280. Shall the amendment carry? That has been withdrawn.

Mrs Caplan: But I wanted to vote for that one.

The Chair: There's a government amendment to section 34 found on page 280. Shall the amendment carry? Same vote? The amendment carries.

Shall section 34, as amended, carry? Same vote? Section 34, as amended, carries.

Shall sections 35 through 40 carry? Same vote? Sections 35 through 40 are carried.

Section 41. Shall the Liberal amendment to subsection 13.1(3.1) found on page 280A carry? Same vote reversed? The amendment is defeated.

The next amendment is a government amendment to subsections 13.1(4) and (5). Shall the amendment carry? Same vote reversed? The amendment is carried.

The next amendment is a Liberal amendment to subsection 13.1(4.1). Shall the amendment carry?

Mrs Caplan: Just a question, Mr Chairman: I just want to be clear that we're dealing with the Liberal amendment to the Conservation Authorities Act that would ensure that any donation that remains in the—

The Chair: Page 282A. Shall the amendment carry? Same vote reversed? The amendment is defeated.

Shall section 41, as amended, carry? Same vote reversed? Section 41, as amended, carries.

Shall section 42 carry? Same vote? Section 42 carries.

Interjections.

The Chair: It's a new section. Shall section 42 carry? Same vote? Section 42 carries.

Section 42.1, there's a government amendment, page 283. Shall the amendment carry?

Ayes

Clement, Ecker, Hardeman, Johns, Lankin, Maves, Sampson, Silipo, Tascona, Young.

Nays

Caplan, McLeod, Phillips.

The Chair: The amendment carries.

Mrs Caplan: Do you believe that? That's the end of conservation authorities.

The Chair: Section 43. The first amendment in section 43 is found on page 284 and it applies to subsection 43(1.1), clause (m.1). Shall the amendment carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Phillips, Silipo.

The Chair: The amendment carries.

The next amendment is an NDP amendment to subsection 43(2), subsections 21(2) and (3), found on page 285. Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is an NDP amendment found on page 286 that amends subsection 43(4), subsections 21(5) and (6). Shall the amendment carry? Same vote? The amendment is defeated.

Shall section 43, as amended, carry? Same vote reversed? Section 43, as amended, carries.

1700

Shall section 44 carry? Same vote? Section 44 carries.

Section 45, government amendment, has been withdrawn.

Shall section 45 carry? Same vote.

Section 46: Liberal amendment on page 287A, amending subsection 46(4), subsection 27(17). Shall the amendment carry?

Ayes

Caplan, Lankin, McLeod, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

The next amendment is a government amendment that amends subsection 46(5), found on page 288. Shall the amendment carry? Same vote reversed?

Interjection: No.

The Chair: Shall the amendment carry then?

Ayes

Clement, Ecker, Hardeman, Johns, Lankin, Maves, Sampson, Silipo, Tascona, Young.

Nays

Caplan, McLeod, Phillips.

The Chair: The amendment carries.

Shall section 46, as amended, carry? Section 46, as amended, is carried.

Shall sections 47, 48 and 49 carry? Same vote? Sections 47, 48 and 49 are carried.

Section 50, a government amendment, page 289, amending subsection 50(1), subsection 44(2). Shall the amendment carry? Same vote? The amendment is carried.

The next amendment, found on page 290, is a government amendment that amends subsections 50(2) to (4), subsections 44(7) to (10). Shall the amendment carry? Same vote? The amendment carries.

Shall section 50, as amended, carry? Carried.

There are no amendments in sections 51 through 57. Shall sections 51 through 57 carry? Same vote? Sections 51 through 57 are carried.

Section 58 is a government amendment, page 291, amending subsection 75(1). Shall the amendment carry? Same vote? The amendment is carried.

A government amendment on page 292 amends subsection 75(3). Shall the amendment carry? Same vote? The amendment is carried.

Shall section 58, as amended, carry? Same vote? Section 58 carries.

There are no amendments in section 59 through section 66. Shall sections 59 through 66 carry? Same vote? Sections 59 through 66 are carried.

Section 67 is a government amendment on page 293, amending clause 117(e). Shall the amendment carry? Same vote? The amendment is carried.

Page 294, a government amendment, amending subsection 118(1). Shall the amendment carry? Same vote? The amendment's carried.

Page 295, a government amendment, amending subsection 118(2). Shall the amendment carry? Same vote? The amendment is carried.

Shall section 67, as amended, carry? Carried.

Shall sections 68 through 70 carry? Same vote? Sections 68 through 70 are carried.

Shall schedule M, as amended, carry? Same vote? Schedule M, as amended, carries.

Schedule N, Amendments to Certain Acts administered by the Ministry of Natural Resources.

Section 1. Shall the Liberal amendment that amends subsection 1(10), subsections 36(2) and (3), and is found on page 296 carry?

Interjections.

The Chair: Same vote reversed? The amendment is defeated.

Shall section 1 carry? Same vote reversed? Section 1 carries.

Section 2. There is a government amendment to subsection 2(1), subclause 5(3)(c)(i), found on page 297. Shall the amendment carry? Same vote?

The next amendment is a Liberal amendment. It amends subsection 2(1), subsections 5(6) to (8). It's found on page 298. Shall the amendment carry? Same vote reversed? The amendment is defeated.

Shall section 2, as amended, carry? Same vote reversed? Section 2, as amended, carries.

Section 3: The first amendment is a Liberal amendment found on page 299 and it amends subsection 3(1), clause 3(1)(e).

Interjections.

Ms Lankin: Mr Chair, I want you to know that I have been trying to follow along very carefully, staying in touch with which ones were up, but I've also been looking ahead, and I want you to know that I have come to the conclusion that the most weaselly worded amendment left in this whole section is the one we're about to deal with, 299, and I bet you the government votes in favour of it.

The Chair: Page 299. Shall this Liberal amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, McLeod, Phillips. Sampson, Silipo, Tascona, Young.

The Chair: The amendment carries unanimously.

The second amendment, found on page 300, is a Liberal amendment. It amends subsection 3(1.1), subsections 3(2.1) and (2.2). Shall the amendment carry?

Ayes

Caplan, McLeod, Lankin, Phillips, Silipo.

Nays

Ecker, Johns, Hardeman, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

Shall section 3, as amended, carry? Same vote reversed? Section 3, as amended, is carried.

Section 4: There is a Liberal amendment on page 301. It amends subsection 14(2.1) and (2.2). Shall the amendment carry?

Ayes

Lankin, McLeod, Phillips, Silipo.

Nays

Ecker, Johns, Hardeman, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

Shall section 4 carry? Same vote reversed? Section 4 carries.

Shall section 5 carry? Same vote? Section 5 carries.

Shall schedule N, as amended, carry? Same vote? Schedule N, as amended, carries.

Schedule O, amendments to the Mining Act: The first section has a Liberal amendment, page 302. It amends section 1. Shall the Liberal amendment carry? Same vote reversed? The amendment is defeated.

Shall section 1 carry? Same vote reversed? Section 1 is carried.

There are no amendments to sections 2 and 3. Shall sections 2 and 3 carry? Same vote? Section 2 and 3 are carried.

Section 4 has a government amendment. It amends section 8. It's found on 303. Shall the amendment carry? Same vote? The amendment carries.

Shall section 4, as amended, carry? Carried.

There are no amendments to sections 5, 6, 7, 8, 9, 10 and 11. Shall sections 5 through 11 carry? Same vote. Sections 5 through 11 are carried.

Section 12 has a government amendment, found on page 304. It amends subsection 44(1.2). Shall the amendment carry? Same vote. Carried. Shall section 12, as amended, carry? Same vote. Section 12, as amended, carries.

1710

There are no amendments to sections 13, 14, 15, 16, 17 and 18. Shall sections 13 through 18 carry? Same vote. Sections 13 through 18 are carried.

Section 19. The government has an amendment to subsections 70(7), (8) and (9). Shall the amendment carry?

Ms Lankin: Just a question: I understood that this deals with the section of the act that hadn't been opened up under the bill. Isn't it an amendment that you would have to rule out of order? You did so well ruling all of those NDP amendments out of order when they were duplicates of ones that had been defeated.

The Chair: Section 70 has been opened. Shall the amendment carry? Same vote? The amendment is carried.

Shall section 19, as amended, carry? Same vote. Section 19, as amended, carries.

Section 20. The government has an amendment, page 306. It amends subsection 73(2). Shall the amendment carry? Same vote. The amendment is carried.

Shall section 20, as amended, carry? Section 20, as amended, carries.

There are no amendments in sections 21, 22, 23, 24 and 25. Shall sections 21 through 25 carry? Same vote? Sections 21 through 25 are carried.

Section 26. The first amendment is a Liberal amendment to section 140. It's found on page 307. Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is a Liberal amendment to section 141. It's found on page 308. Shall the amendment carry? Same vote. The amendment is defeated.

The next amendment is an NDP amendment to sections 140 and 141. Shall the amendment pass? Same vote. The amendment is defeated.

The next amendment is a Liberal amendment to section 143. Shall the amendment carry? Same vote. The amendment is defeated.

The next amendment is a Liberal amendment to subsection 145(1). Shall the amendment carry?

Ayes

Caplan, Lankin, McLeod, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

The next amendment is a New Democratic Party amendment, page 313, that amends subsection 145(1). Shall the amendment pass?

Ayes

Caplan, Lankin, McLeod, Phillips, Silipo.

Nays

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

The Chair: The amendment is defeated.

The next amendment is a government amendment to subsection 145(10). Shall the amendment carry? Same vote reversed. The amendment is carried.

The next amendment is a Liberal amendment to subsection 145(11). Shall the amendment carry? Same vote reversed? The amendment is defeated.

Shall section 26, as amended, carry? Oh, I was a little premature on the question. We've got a few more to do here. I retract the question and go back to another NDP amendment that—

Ms Lankin: Do you need unanimous consent to do that?

The Chair: Pardon? No, there's a line in a funny place here.

There is another NDP amendment to subsections 145(10) and 145(11). Shall the amendment carry? Same vote? The amendment is defeated.

The next amendment is a government amendment to subsections 147(1) and 147(2). Shall the amendment carry? Same vote reversed? The amendment is carried.

The next amendment is a Liberal amendment to subsection 147(1). Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is a government amendment to subsection 148(9). Shall the amendment carry? Same vote reversed? The amendment carries.

The next amendment is a Liberal amendment to subsection 148(9). Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment is an NDP amendment to section 149.1. Shall the amendment carry? Same vote. The amendment is defeated.

The next amendment is a Liberal amendment to subsection 152(1). Shall the amendment carry? Same vote? The amendment is defeated.

Shall section 26, as amended, carry? Same vote reversed? Section 26, as amended, carries.

Section 27. The first amendment is a government amendment to subsection 150(1). It's found on page 322. Shall the amendment carry? Same vote? The amendment carries.

The next amendment is a Liberal amendment to subsection 150(1). Shall the amendment carry? Same vote reversed? The amendment is defeated.

Shall section 27, as amended, carry? Same vote reversed? Section 27, as amended, carries.

Section 28. The first amendment is a government amendment to section 152. Shall the amendment carry? Same vote? The amendment carries.

The next amendment is a Liberal amendment to section 153.1. Shall the amendment carry? Same vote reversed? The amendment is defeated.

The next amendment, found on page 326, is a government amendment to subsection 153.2(3). Shall the amendment carry? Same vote reversed? The amendment carries.

The next amendment is a government amendment to subsection 153.3(1). Shall the amendment carry? Same vote? The amendment carries.

Shall section 28, as amended, carry? Same vote? Section 28, as amended, carries.

Sections 29, 30 and 31 have no amendments. Shall sections 29 through 31 carry? Same vote. Sections 29 through 31 are carried.

Section 32 has a Liberal amendment, found on page 328; it amends section 176. Shall the amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, McLeod, Phillips, Sampson, Silipo, Tascona, Young.

The Chair: The amendment carries.

Shall section 32, as amended, carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Phillips, Silipo.

The Chair: Section 32, as amended, carries.

1720

There are no amendments to sections 33 through 36. Shall sections 33 through 36 carry? Same vote? Sections 33 through 36 are carried.

There's a new government section 36.1 covered under the amendment on page 329. Shall the amendment carry? Same vote? Section 36.1 carries.

Going back to the new section 36.1, the government amendment is out of order.

Mr Clement: Section 36.1?

The Chair: Section 36.1 is out of order.

Mr Sampson: Mr Chairman, on a point of order: Could we have unanimous consent to consider that motion?

The Chair: It's been ruled out of order. With unanimous consent we can—

Mrs McLeod: What is the unanimous consent to do?

The Chair: To consider an amendment that's out of order.

Mrs McLeod: Why would do that? We haven't been able to ask a single question.

Mr Clement: I've already talked to Gerry about this amendment, so don't give me that.

Mrs Caplan: What are you talking about? Put it on the record.

The Chair: The amendment is in front of you. You can read it. They're asking for unanimous consent—

Mrs Caplan: We'll give you unanimous consent if you tell us—

The Chair: We cannot have a question and answer period. I've asked—

Mrs Caplan: Put it on the record.

The Chair: Mrs Caplan, would you let me take care of the meeting, please.

The amendment has been put before you. I've ruled it out of order. The government has asked for unanimous

consent to vote on it, and basically it's a yes or no answer to the question.

Mr Silipo: There's no explanation?

The Chair: No explanation. It's out of order because it deals with a section of the act that hasn't been opened up.

Mr Silipo: I can understand why it's out of order. I don't understand why we're being asked for unanimous consent. We don't want to be unreasonable. Why would it not be possible for someone from the government side to give a 30-second explanation of why this is needed?

Mr Sampson: Mr Chairman, maybe I can ask that we give unanimous approval to reconsider this motion because the change in time will allow for a safer environment in which the prospecting can be done.

The Chair: Mr Sampson has asked for unanimous consent to reconsider a motion I've ruled out of order. Does he have unanimous consent?

Mrs McLeod: It's absolutely incredible that the government is still making mistakes that they want us to fix by unanimous consent.

Interjections.

The Chair: Okay. We have unanimous consent to consider a motion that's been ruled out of order.

Mr Phillips: Mr Chair, we get a chance to comment on it, I assume?

The Chair: Basically, no. There's not going to be any comments on it.

Mrs Caplan: So we give unanimous consent but we don't even have a chance to ask a question or make a comment.

The Chair: You can say yes or no. If you don't want to say yes to the unanimous consent request, be my—that's going to be the rule.

Mrs McLeod: Mr Chairman, can we take a five-minute recess so that off the record we can find out what this is about?

The Chair: Say yes or no.

Mrs McLeod: I thought we could request a recess. Mr Chairman, I didn't think it took unanimous consent to request a recess.

The Chair: We've got an opportunity for one 20-minute recess, if you want to use it.

Mrs McLeod: I'd be happy to have a two-minute recess. I want to find out what this is about. I'm not prepared to be forced into unanimous consent to fix mistakes without even knowing what we're fixing.

The Chair: You've got an option of one 20-minute thing, so you can take as much of it as you want.

Mrs Caplan: Two minutes is all we need to get an answer here.

Mr Ecker: If you can't keep your caucus together, that's not our problem.

Mrs Caplan: What's your problem, Janet? All we're asking for is an explanation. I know that's hard for you.

The Chair: Did somebody ask for a two-minute recess?

Mrs McLeod: Yes.

The Chair: Granted.

The committee recessed from 1725 to 1726.

The Chair: Mr Sampson has asked for unanimous consent to reconsider an amendment that I ruled out of

order. Do we have unanimous consent? Okay. Shall the amendment carry?

Ayes

Caplan, Clement, Ecker, Hardeman, Johns, Lankin, Maves, McLeod, Phillips, Sampson, Silipo, Tascona, Young.

The Chair: The amendment carries. Section 36.1 carries unanimously.

Mrs McLeod: May I just know for the record why it was out of order and had to be reconsidered?

The Chair: Because it dealt with a section of the act that had not been opened up previously.

Sections 37, 38 and 39 have no amendments. Shall sections 37, 38 and 39 carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Phillips, Silipo.

The Chair: Sections 37 through 39 are carried.

Shall schedule O, as amended, carry? Same vote? Schedule O, as amended, is carried.

Schedule P amends the Ministry of Correctional Services Act. There are no amendments to sections 1 and 2. Shall sections 1 and 2 carry? Same vote? Sections 1 and 2 are carried.

Shall schedule P carry? Same vote? Schedule P is carried.

Schedule Q amends various statutes with regard to interest arbitration. The first amendment is on section 1, a government amendment to subsections 6(5.1) through (5.3), page 330. Shall the amendment carry?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Phillips, Silipo.

The Chair: The amendment carries.

Shall section 1, as amended, carry? Same vote? Section 1, as amended, is carried.

Section 2. There's a government amendment, page 332, amending subsections 9(1.1) to (1.3). Shall the amendment carry? Same vote? The amendment carries.

Shall section 2, as amended, carry? Same vote? Section 2, as amended, carries.

Section 3. There's a government amendment to subsections 122(5) to (5.2), page 334. Shall the amendment carry? Same vote? The amendment is carried.

Shall section 3, as amended, carry? Same vote? Section 3, as amended, carries.

There's a government amendment to section 4 found on page 336, amending subsections 27(3.2) to (3.4). Shall the amendment carry? Same vote? The amendment carries.

Shall section 4, as amended, carry? Same vote? Section 4, as amended, carries.

Section 5 has two amendments. The first is a government amendment to subsection 5(1), subsections 35(1.1) to (1.3), page 338. Shall the amendment carry? Same vote? The amendment carries.

The second amendment, on page 340, amends subsection 5(2), subsections 47(2) to (4). Shall the amendment carry? Same vote? The amendment carries.

Shall section 5, as amended, carry? Same vote? Section 5, as amended, carries.

Shall section 6 carry? Same vote? Section 6 carries.

Shall schedule Q, as amended, carry? Same vote? Schedule Q, as amended, carries.

The NDP amendment to the long title of the bill. Shall the amendment carry? Same vote reversed? The amendment does not carry.

Shall the title of the bill carry?

Nays

Clement, Ecker, Johns, Hardeman, Maves, Sampson, Tascona, Young.

Ayes

Caplan, Lankin, McLeod, Phillips, Silipo.

The Chair: The title of the bill carries. Shall the bill, as amended, carry?

Mrs McLeod: On a point of order, Mr Chairman: I believe we have now completed the clause-by-clause amendment process as dictated by the terms of the agreement in the direction to this committee.

The Chair: Not yet, we haven't.

Mrs McLeod: But before you place the motion to report back to the House, I want it on record that what we have just been through, reluctantly, is the greatest violation of democratic due process that any of us not only has ever seen before but will ever see again. Normally, a week of clause-by-clause is sufficient time to get through the detailed debate on the amendments to a bill. We have just rammed through, of approximately 350 amendments, all but 45 of those amendments. We were not dealing with one bill; we were dealing with 47 different pieces of legislation.

The Chair: Thank you, Mrs McLeod. Shall the bill, as amended, carry?

Ayes

Clement, Ecker, Johns, Hardeman, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, McLeod, Phillips, Silipo.

The Chair: Shall I report the bill to the House?

Ms Lankin: Mr Chair, before you place that motion—

The Chair: Is this a point of order, Ms Lankin?

Ms Lankin: I would hope so. As you will recall—

The Chair: If it's not a point of order, I don't have an opportunity—

Ms Lankin: You'll have to tell me if it is. You will know I tabled a motion with the clerks and with yourself

earlier in the week and indicated that I would like that called later in the week. I would like to have the opportunity, before you adjourn—and it may not be before this motion to report back; it may be immediately subsequent—to place that motion for debate.

The Chair: From 1 o'clock today, the specific instructions we are working under do not allow that motion to be in order.

Ms Lankin: Could I ask you a question about that, Mr Chair? I understand that I couldn't interrupt the proceedings in any way from 1 o'clock on, and it may be that I'm just a minute too soon in terms of the next vote you have to place, which is to report the bill. But I don't believe there is anything that prohibits this committee—and if it takes unanimous consent, I ask for unanimous consent—from considering a matter.

I don't want to interrupt the business that was directed by the House, but I tabled a motion and I gave everyone fair notice that I would like the opportunity to place that motion. It doesn't have to be a long debate. But I would ask that after you proceed with the vote on the motion of reporting the bill to the House and before you adjourn or recess the committee, you at least allow me to read my motion into the record. If members opposite won't give unanimous consent or you rule it out of order at that time, that's fine, but I would like the opportunity, if the clerk would provide me with a copy, that it could be read into the record.

Mr Silipo: Could I just—

The Chair: I've got to give Ms Lankin an answer on her motion.

Mr Silipo: I want to add something which may be of some help to you in giving that answer. It is a point of order I'm raising. When Ms Lankin placed this motion, she made it clear that this was something we wanted the committee to deal with at some appropriate time. My understanding in the way you received it was that you indicated that, fine, that was received by the committee and the committee would be dealing with it at some

point. There's an onus, therefore, on you as the Chair to ensure that the motion is dealt with by the committee.

As Ms Lankin indicated, we understand the procedure in terms of 1 o'clock forward. The motion either should have been dealt with before 1 o'clock—and I think there's some responsibility on you and the clerk to have brought that forward—or once we complete the items we were called upon to do starting at 1 o'clock today, it's appropriate for us to deal with that.

The Chair: Wait a minute. First of all, we're going to finish the business we set out to do this afternoon.

Shall I report the bill, as amended, to the House?

Ayes

Clement, Ecker, Hardeman, Johns, Maves, Sampson, Tascona, Young.

Nays

Caplan, Lankin, Phillips, Silipo.

The Chair: The motion carries.

Mrs Caplan: Mr Chairman, I would like to register my protest as a point of order. I think it is a legitimate point of order. We had the assurance that we would have our questions answered before this bill was reported to the House. There was no parliamentary assistant carrying this legislation. There was no minister carrying this legislation. We were told we had to place our questions on the record and we were given the assurance that those questions would be answered before this bill was reported to the House. Very important questions have not been answered—

The Chair: Thank you, Mrs Caplan. The position—

Mrs Caplan: I believe it's a legitimate point of order. We had the assurances—

The Chair: The position I'm taking now is that the job that I was given to do I have finished, and the meeting is adjourned.

The committee adjourned at 1737.

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*Tascona, Joseph N. (Simcoe Centre / -Centre PC)

Wood, Len (Cochrane North / -Nord ND)

*Young, Terence H. (Halton Centre / -Centre PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Caplan, Elinor (Oriole L) for Mr Sergio

Carr, Gary (Oakville South / -Sud PC) for Mr Maves

Clement, Tony (Brampton South / -Sud PC) for Mr Kells

Ecker, Janet (Durham West / -Ouest PC) for Mr Stewart

Johns, Helen (Huron PC) for Mr Danford

Lankin, Frances (Beaches-Woodbine ND) for Mr Marchese

McLeod, Lyn (Fort William L) for Mrs Pupatello

Phillips, Gerry (Scarborough-Agincourt L) for Mr Grandmaître

Sampson, Rob (Mississauga West / -Ouest PC) for Mr Flaherty

Silipo, Tony (Dovercourt ND) for Mr Wood

Also taking part / Autre participants et participantes:

Bisson, Gilles (Cochrane South / -Sud ND)

Ministry of Municipal Affairs:

Gray, Scott, solicitor

Clerk / Greffière: Grannum, Tonia

Clerk pro tem / Greffier par intérim: Decker, Todd

Staff / Personnel:

Baldwin, Elizabeth, legislative counsel

Hopkins, Laura, legislative counsel

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Official Report of Debates (Hansard)

Thursday 27 June 1996

Journal des débats (Hansard)

Jeudi 27 juin 1996

Standing committee on general government

Labour Union
and Employees Association
Financial Accountability Act, 1996

Subcommittee report

Comité permanent des affaires gouvernementales

Loi de 1996 sur la responsabilité
financière des syndicats
et des associations d'employés

Rapport du sous-comité



Chair: Jack Carroll
Clerk: Tonia Grannum

Président : Jack Carroll
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LEGISLATIVE ASSEMBLY OF ONTARIO
**STANDING COMMITTEE ON
 GENERAL GOVERNMENT**

Thursday 27 June 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO
**COMITÉ PERMANENT DES
 AFFAIRES GOUVERNEMENTALES**

Jeudi 27 juin 1996

The committee met at 1004 in committee room 1.

LABOUR UNION AND
 EMPLOYEES ASSOCIATION
 FINANCIAL ACCOUNTABILITY ACT, 1996
 LOI DE 1996 SUR LA RESPONSABILITÉ
 FINANCIÈRE DES SYNDICATS
 ET DES ASSOCIATIONS D'EMPLOYÉS

Consideration of Bill 53, An Act to Promote Full Financial Accountability of Labour Unions and Employees Associations to their Members / Projet de loi 53, Loi visant à promouvoir la responsabilité financière complète des syndicats et des associations d'employés envers leurs membres.

The Chair (Mr Jack Carroll): Our first order of business is to consider the subcommittee report, which you all have a copy of. If there are no questions about the report of the subcommittee held on June 10, I'll have a motion for its adoption. Rosario, you were there. Do you want to read this into the record?

Mr Rosario Marchese (Fort York): "(1) That witnesses appear before the committee.

"(2) That all witnesses are allotted 15-minute time slots.

"(3) That each caucus provide the clerk of the committee with a list of witnesses to be scheduled, by Thursday, June 13, 1996, at 5 pm.

"(4) That clause-by-clause consideration of the bill commence following witness presentations" — that should be slightly adjusted based on what you were recommending.

"(5) That amendments are delivered to the clerk of the committee by Thursday, June 27, 1996, at 11 am.

"(6) That the researcher provide background information if possible.

"(7) That the Chair and the clerk of the committee have the authority to schedule witnesses."

The Chair: The subcommittee report has been read into the record. Can I have a motion for its adoption, please?

Mr Joseph N. Tascona (Simcoe Centre): I so move.

The Chair: Any discussion?

Mr Marchese: Just a slight change, given what we were just proposing. Item 4 states, "That clause-by-clause consideration of the bill commence following witness presentations."

Clerk of the Committee (Ms Tonia Grannum): That just means after, any time after.

Mr Marchese: Any time after? That's fine.

The Chair: Any other questions? All those in favour? Motion carried.

Right away we're ahead of time here. We've got a few minutes now for some opening comments by the sponsor of the bill, Mr Gilchrist.

Mr Steve Gilchrist (Scarborough East): It's indeed a pleasure to join your committee this morning to say a few things about Bill 53. Much has been said in the House already and I won't repeat myself save and except to go over some of the highlights of the bill, if I may.

I very much believe that this bill is pro-union in the sense that it promotes accountability and will do nothing except improve the status and stature of unions and put to rest once and for all any suggestion that they are not responsible managers of the funds they've been entrusted with by their members.

It is pro-union member. It improves the access of the rank-and-file membership to the most important financial data, and most particularly to the salary levels of the most senior executives, if they exceed \$100,000 a year.

In the context of the bill, I don't believe there will be all that many filings which will indicate recipients in excess of \$100,000. This, if anything, should compel all members of the Legislature and particularly members of the third party to sponsor this bill. If there are only a handful of union leaders who would be listed as a result of this bill, then I really believe our obligation to the literally hundreds of thousands of union members and the hundreds of other union executive leaders is that they should be allowed full access to this information. Surely if anyone in this province espouses democratic rights, and in particular the rights of the average working man and woman, it would be the third party. In that I agree with them fully and I would certainly ask them to consider carefully to whom our responsibilities lie.

Finally, I would ask all members to consider the positive comments that were made from members of all three parties surrounding the issue of publicly traded companies when the third party brought forward its bill, and the Public Sector Salary Disclosure Act, which was brought forward in December of last year by our government and which has received innumerable positive comments as a result of the publication of the salary listings back in March. In many respects, unions will still not be treated with the same scrutiny with which publicly traded companies are treated, nor should they, but in saying that it must be emphasized that there is a relevant standard of disclosure for unions to meet. This bill I believe sets a fair balance between undue bureaucracy and the legitimate right to know for the union members.

Any specific concerns we can certainly deal with here in committee this morning, but I think on balance this bill is a positive and constructive addition to existing sunshine laws which have been implemented by both the

NDP and our current government. It provides full access to information. It supports the principles of democracy and full participation of the membership on which the union movement was founded over 100 years ago. If we all believe in honesty and integrity within the union movement, if we believe that the rights of union members are paramount and if we believe that unions should be treated on the same basis as other key elements of our economy, no better and no worse, then I would respectfully suggest that Bill 53 addresses all of those principles and gives an important new right to the hundreds of thousands of working Ontarians who participate in and contribute to the union movement in this province.

With that, I look forward to the presentations this morning and the chance to discuss the bill further.

The Chair: A couple of minutes for the opposition parties to make some opening comments if they'd like.

Mr Bernard Grandmaitre (Ottawa East): We see no problems, Mr Chair. I think we should get on with the witnesses.

Mr Marchese: I have some profound disagreement with the tone of this and what it implies, but what I would prefer to do is to have the deputants speak to this and reserve our comments to later on, clause-by-clause, to make our points with respect to it.

1010

ONTARIO TAXPAYERS FEDERATION

The Chair: Our first deputant is from the Ontario Taxpayers Federation, Mr Paul Pagnuelo. Welcome, sir. We appreciate your attendance here this morning. You have 15 minutes to use as you see fit. Questions will be at the end if you allow any time for them. The floor is yours, sir.

Mr Paul Pagnuelo: Good morning, Mr Chair and committee members. The Ontario Taxpayers Federation certainly welcomes the opportunity to appear before your committee and to comment on Bill 53.

I think we need to begin by saying that from our perspective financial accountability means being responsible to those who have entrusted money to you. In the case of governments, bureaucrats must be accountable to politicians and the politicians in turn have to be accountable to taxpayers for the tax dollars they spend. If we look at businesses, senior management is accountable to a company's board of directors, and they are in turn accountable to shareholders for the revenue and equity dollars that they spend. Charitable and not-for-profit organizations must be accountable to their supporters for the donations and membership fees that they spend. Likewise, unions and employee associations must be accountable to their rank and file for the dues they spend.

Organizations with tax-free or charitable status, those which receive government grants or those whose membership fees or dues are tax-deductible are indirectly funded by the taxpayer, and as such they have a responsibility, we believe, to uphold the public trust. When organizations are directly or indirectly funded by taxpayers, in our view the public has a right to know if they're well or poorly managed and where the funding is going.

Under law, unions are given special privileges. They receive tax-free status, tax deduction status and other special statutory advantages. Apart from any direct funding they may receive, unions have a statutory relationship with government from which they benefit greatly, and it is this relationship that we think should make unions accountable to the public and, specifically and more importantly, to their own members.

As you may be aware, there are over 130,000 charitable and not-for-profit organizations in Canada, and it is estimated that they are responsible for a \$120-billion-a-year industry, \$49 billion of which comes from various levels of government. Despite the fact that many of these groups fill a legitimate place in Canadian society, a picture has emerged which shows a definite need for a major overhaul in how government funds and oversees them, especially the so-called special-interest groups.

Federal Liberal MP John Bryden has been targeting these groups for some time now in an effort to bring some accountability to this sector. To quote John:

"Most special-interest groups are totally or almost totally dependent on government funding, and use government money to lobby the government for more money. Taxpayers' money is often used by the senior staff to pay themselves generous salaries. Government grants are distributed year after year with no scrutiny or accountability."

Bryden has put together a 57-page report documenting a very troubled industry. In many cases, despite being the recipients of government largess and claiming large constituencies, these organizations do not have the support of their constituencies and have become dependent on government financing to further their causes. I'll give you some examples.

Wildlife Habitat Canada raised only \$9,601 in private donations in 1993-94, yet federal and provincial governments gave it \$2.7 million in grants.

The National Association of Canadians of Origins in India claims to represent over 750,000 Canadians of this heritage, yet according to its annual report it could raise no more than \$4,881 in memberships, donations and other revenue. However, over the past 10 years it received \$860,400 from the government.

The Smoking and Health Action Foundation didn't receive any financial support from its members in 1992-93 but received \$415,000 in federal and provincial grants. The bulk of that, \$400,821, was paid out in salaries and benefits to its eight-member staff.

What about political donations? I think many Canadians would be shocked and stunned to hear that the chamber of commerce in Quebec City gave a \$650,000 mansion with \$150,000 worth of furnishings to Jacques Parizeau when he was Premier of Quebec. The money for the gift was claimed as a 100% business expense deduction.

In a similar vein, the Canadian Labour Congress, the largest union in Canada, has received more than \$41 million over the past 10 years from the federal government for labour education. In 1993, the CLC donated \$1.5 million to the New Democratic Party, money which in effect was subsidized by taxpayers.

To quote John Bryden again, "It's an incredible distortion of the political composition of the country to have a major political party funded by the government."

The financial affairs of these organizations have been devoid of public scrutiny for too long. The confidentiality provisions of the Income Tax Act and the Access to Information and Privacy Act prevent the public from examining the spending of non-profit organizations. In addition, the Income Tax Act requires that charities use at least 80% of donated revenue on their charitable activities but has no rules regarding grants.

In 1990, the senior assistant secretary of the Treasury Board stated: "When you provide money as a grant, you are specifically saying that you think their organization, be it a business, a volunteer group or whatever, has some noble purpose...you say that the Parliament and the government are prepared to see that money go for their purposes but that you do not care, within the realm of their purposes, how that money will be spent."

As you may know, Bryden introduced two private member's bills in the House of Commons to try to curb the spending. One would require all charitable and non-profit organizations in receipt of public money to declare the remuneration of their directors and senior officers. The other would amend the Income Tax Act so that the general public would have access to Revenue Canada's audits of charities and non-profit organizations.

He also called for an amendment to the Lobbyists Registration Act to end government funding for special-interest advocacy organizations. The amendment would make it against the law for lobby groups to use government funding to lobby governments, and for any other group, not defined as a lobby group, to use over 10% of the money received from government to lobby government.

Unfortunately, the House of Commons prorogued and the bills died. But still, Bryden's work has received widespread support from members of all political parties, and it has most certainly generated debate on the role of special-interest groups in Canadian society.

Obviously, there are many groups falling under the umbrella of special-interest groups that function effectively. The Ontario Taxpayers Federation and our national parent, the Canadian Taxpayers Federation, for example, are both certified not-for-profit organizations. However, both our organizations are funded entirely by memberships and free-will donations and are completely free of any government funding. Our position is that any group which represents a legitimate constituency should be able to depend on its members for support, making government funding unnecessary.

With the Public Sector Salary Disclosure Act, the government of Ontario took a very important first step in improving financial accountability for public sector spending. We certainly applaud Mr Gilchrist for taking the initiative to sponsor this private member's bill which will extend the process of full financial accountability to include labour unions and employee associations.

While this bill is similar to the Public Sector Salary Disclosure Act in terms of salary disclosure, it does go much further by requiring labour unions and employee associations to make available, for inspection by the public, an audited statement of their financial affairs.

That is not to say that we are in disagreement with this extra provision. We think it's an important addition and one which we would consider even more valuable than the salary disclosure component. But what this bill does point out is the deficiency in the Public Sector Salary Disclosure Act.

We believe Bill 53, as drafted, represents a good piece of legislation and one which it would be hard to argue against in respect to the principles of public trust and financial accountability.

While we urge the Legislature to pass the bill in its present form, the Ontario Taxpayers Federation would like to take and use this opportunity to call on the government to introduce additional legislation, legislation which would require all charitable and not-for-profit organizations to make available for public inspection an audited annual statement of their financial affairs. We would also recommend that the condition of receiving a particular level of funding from government before the salary reporting requirement is triggered for corporations, entities or organizations be deleted.

I thank you for the opportunity to comment this morning and would be pleased to answer any questions you may have.

The Chair: Thank you, sir. We've got about two minutes per caucus left for questions, beginning with the official opposition.

1020

Mr Grandmaître: I fully agree with the presentation. I think it's about time we became more accountable. Not only politicians but every organization should become more accountable to the public. I remember in my days at the municipal level we had two systems of grants at the municipal level: unconditional grants and conditional grants. Municipalities had to respect whatever agreement was signed with the provincial government, with the Ministry of Transportation, for instance — especially transportation — and they would look at our books every year, if we qualified for additional dollars, or limit our grants for the following year.

We do live in an age where accountability has become the number one issue and I think we should go ahead with the bill before us. I realize that some organizations may not like the bill, but on the other hand we do have laws in place, the Income Tax Act and the Access to Information and Privacy Act, and I think these laws have to be respected and they can be respected if we accept this bill.

Mr Marchese: Some quick comments. First of all, as far as I know most unions are accountable to the members and there is disclosure. Ross McClellan can perhaps speak to that when he comes. Second, I agree with accountability mechanisms for all organizations, profit or not-for-profit. Do you agree that as much as we should include not-for-profit organizations, we should also look at for-profit organizations?

Mr Pagnuelo: In terms of public disclosure? Right now, you take a look at the accounting guidelines set out in terms of what they must disclose each year. Certainly, your government made the first move in that area in terms of requiring senior executives to report their

salaries. Anyone who can argue against full public disclosure is really saying they have something to hide.

Mr Marchese: But you agree that we should include profit and not-for-profit as well in this category. Is that correct?

Mr Pagnuelo: In terms of full public disclosure? Sure.

Mr Marchese: Okay. Second, you talked about how business is accountable to its board of directors. I was thinking very specifically about banks, to whom we give a charter to print money in effect. You deposit your money in the bank, small business deposits in the bank. Ninety per cent of those deposits belong to us; 10% belong to the shareholder. They control \$150 billion in Ontario that is largely ours. Do you think the banks are accountable to the money we deposit in those accounts, to the general public?

Mr Pagnuelo: I think they are accountable, number one, to their shareholders. In terms of their customers, if they're not accountable to them and if you feel and if I feel as a customer of a financial institution that they're not being accountable to us, my choice is to go next door.

The Chair: Thank you, Mr Marchese.

Mr Marchese: Only two minutes.

The Chair: Two minutes goes by so quickly nowadays.

Mr Gilchrist: I'd like to thank Mr Pagnuelo for coming in and taking the time to make a presentation before us here today. I appreciate your suggestion at the end. In the context of what I'm trying to address in this bill, it would certainly be appropriate to consider a separate bill for other —

Mr Pagnuelo: That's what I'd like to see. We're seen as an organization. We have nothing that we would be fearful of hiding or not disclosing, and we're quite prepared to make our books publicly available and disclose salaries.

Mr Tascona: In the bill under clause 10(1)(a), there's a provision to exempt a labour union or employees from the act. Do you think there's any public interest to have that provision in place?

Mr Pagnuelo: Why would you want to exempt anyone? If you're really looking at full public disclosure, the moment you start building in exemptions, then you start weakening the whole process of accountability. I don't see why one would want an exemption, but perhaps there's a good reason that I'm not aware of.

Mr Terence H. Young (Halton Centre): Were you supporting Mr Marchese's suggestion that for all private companies, the salaries and benefits of their executives be published, all private companies including Becker's stores and small businesses and —

Mr Pagnuelo: No. For anything that's publicly held, that's owned by shareholders, that are trading on public markets, their executives should be accountable to their shareholders.

Mr Young: For the record, Mr Chair, I believe Mr Pagnuelo was misunderstood in what he said before. I think the question from Mr Marchese —

Mr Marchese: Who's speaking for whom?

Mr Young: I'm trying to clarify what was said and what was agreed to.

The Chair: Thank you very much, Mr Pagnuelo. We appreciate your attendance here this morning and your interest in this bill.

ONTARIO FEDERATION OF LABOUR

The Chair: Our next presenter is from the Ontario Federation of Labour, Ross McClellan, the director of legislation. His brief has been pre-circulated. Good morning and welcome to our committee. Fifteen minutes is yours to use as you see fit. Questions would start with the New Democrats, if you allow time for them.

Mr Ross McClellan: On behalf of the 650,000 members of the OFL, we're pleased to present this submission. Let me declare, first of all, that the labour movement fully supports the principle of financial accountability to our members. In fact we fully practise it. In many labour organizations the salary of officers is disclosed as a constitutional requirement. To cite just one example, the constitution of the Ontario Federation of Labour, in articles 6, 7 and 8, states and lists the salaries of its three full-time officers, and for your information, our president, Gord Wilson, is paid \$81,100 per annum. I'm aware that the constitution of the United Steelworkers also — the salary of the officers is set in convention by the membership elected to the convention.

Labour unions are democratic organizations. The officers of the unions, from the shop floor to the senior officers, are elected by secret ballot vote of the membership and, as is the case with all elected officials, including yourselves, they're fully accountable to their constituents for their actions.

I'd like to digress from the brief for a moment. The bill basically does two things: (1) It requires labour unions to make available to the public without charge an annual statement of their assets and liabilities, an audited statement, and (2) an annual record of the names, positions, salaries and benefits of employees who receive more than \$100,000 a year. That's the second provision of the bill.

Let me just deal with the first requirement, because I think the bill is based on a fairly considerable misunderstanding of the existing law. I refer you to section 92 of the Labour Relations Act of Ontario, the section entitled "Duty of union to furnish financial statements to members." Section 92(1): "Every trade union shall upon the request of any member furnish the member, without charge, with a copy of the audited financial statement of its affairs to the end of its last fiscal year," and it goes on to detail the requirement.

Subsection (2): "Where a member of a trade union complains that an audited financial statement is inadequate, the board" — that is, the Ontario Labour Relations Board — "may inquire into the complaint and the board may order the trade union to prepare another audited financial statement in a form and containing the particulars that the board considers appropriate." In other words, if there's the slightest concern on the part of any member of a labour union, they have the right in law to go to the Ontario Labour Relations Board and not only demand a copy of the financial statements, the audited statements, but they can make an appeal to the board to investigate any matter that they think needs investigation, and the board has the power to so do.

With respect, the provisions of Bill 53 are redundant in this respect, the first purpose of the bill. I would say the enforcement provisions in Bill 53 are incredibly weak in comparison with the very strong enforcement provisions of the Ontario Labour Relations Act.

Dealing with the second part of the bill, which is the salary disclosure provision, I'd just like to raise two very basic questions. The first is with respect now to the salary disclosure provision: What problem is Bill 53 supposed to solve? Before you legislate, please tell us what problem is being solved.

1030

As Ontario's central labour body, the OFL frequently receives inquiries and complaints from local unions with respect to a host of issues. I've canvassed the Ontario Federation of Labour staff, past and present, and there is not a single recollection of a single complaint from a single person with respect to the issue of the disclosure of the salaries of union officers and staff.

The notion that union salaries are shrouded in secrecy is complete fantasy. It is preposterous to assume that Ontario needs to pass a law to enable union members to view the annual audited statement. As I said, the law already exists. We assert straightforwardly that any and all information about the salary and benefits of union officers and staff is readily available to union members for the asking.

So before the government imposes a new set of bureaucratic red-tape requirements on private member-run organizations, I repeat the question: What problem does Bill 53 solve with respect to salary disclosure?

We challenge the sponsor of the bill and its supporters to identify a single, solitary real person with a real example of salary information denied from a real union.

The second question to be raised here is, why is the labour movement being singled out for special treatment?

The provisions of Bill 53 are unique to the labour movement, even though the sponsor of the bill claims otherwise. Statements made during the second reading debate by government Conservative MPPs to the effect that Bill 53 simply extends the provisions of Bill 26 to the unions are completely false.

During the second reading debate, the member for Scarborough East said: "Bill 53 was inspired by this" — Bill 26, that's the public salaries disclosure act — "standard of accountability and, subsequent to the release of the salary information in the public sector, I had no fewer than three close union friends separately question why neither our government nor the NDP has applied the same standard to trade unions and employee associations. I had to admit to them that there was no good reason I could think of why these organizations" — that is to say unions — "had been left out" — of Bill 26 — "and I committed to attempt to redress that oversight in a private member's bill."

Perhaps the explanation as to why the member could not find a good reason is the fact that these organizations, trade unions, are not left out of the Public Sector Salary Disclosure Act at all. Unions are included in the provisions of Bill 26, in case you didn't know that.

Under Bill 26, a public sector employer, as defined in section 2 of the Public Sector Salary Disclosure Act,

whose organization receives governments transfer payments is required to disclose the names of anyone who receives salary and benefits above \$100,000 a year. An employer is considered a public sector employer for the purposes of the Public Sector Salary Disclosure Act if his or her organization is currently in receipt of government funding, according to the threshold set out in the bill, of \$1 million or an amount equal to 10% of gross revenue above a minimum of \$120,000.

Under these specific and limited circumstances non-governmental bodies are required to comply with the disclosure provisions of Bill 26.

I would assume any person reading the Public Sector Salary Disclosure Act would understand that a labour union, which meets the government funding threshold of subsection 2(2), would constitute a public sector body for the purposes of the act and would be required to follow the disclosure provisions. Just to remind you, subsection 2(1) of the Public Sector Salary Disclosure Act defines a public sector employer as a public sector body in clause (k) as "any corporation, entity, person or organization of persons to which the government funding in subsection (2) applies."

To repeat, the labour movement is already fully covered by the provisions of Bill 26. Bill 53 is not a simple extension of the provisions of the Public Sector Salary Disclosure Act at all. Under Bill 53, every labour union is required to comply with the disclosure obligations whether they receive government funds or not.

We submit that this special treatment is discriminatory. It leads to the obvious conclusion that Bill 53 is punitive in its intent and purpose. It leads to the obvious conclusion that the bill is designed to punish the labour movement for its outspoken criticism of the policies of the Harris government.

In conclusion, we challenge the sponsor of this bill to prove that a problem exists to justify a legislative solution above and beyond the measures already in place, and I refer to the Labour Relations Act on the one hand and Bill 26 on the other.

If it can't be proved there's a problem, we respectfully submit that the union movement not be singled out for special discriminatory treatment. The provisions of Bill 26 already apply and Bill 53 is completely unnecessary unless, of course, the government is willing to follow up on Mr Pagnuelo's suggestion that all corporations with share capital be brought within the ambit of Bill 53. I say, quite frankly, we would support such an initiative. We are fully in support of disclosure provisions as long as they are applied equally throughout the economic sector. If the government is saying that salary disclosure is such an important issue of public policy that all employees and officers of corporations without share capital who earn above \$100,000 a year shall have their salaries disclosed, we would be happy to support the bill as amended. Thank you, Mr Chairman.

The Chair: Thank you very much. We've got a short two minutes per caucus for questions, beginning with the New Democrats.

Mr Marchese: Thank you, Mr McClellan, for your presentation. I found it useful and informative. We haven't much time, as you noticed earlier in terms of

previous questions we had, but I recall the arguments around the employment equity bill that we introduced and the arguments this group of people on the opposite side made against it. They talked about how employment equity was excessively bureaucratic and incredibly draconian and intrusive. They disagreed with the enforcement mechanism that would fine people if they didn't do things right.

As I read this bill, I find it incredibly bureaucratic, incredibly draconian and intrusive and incredibly tough in terms of enforcement. This act here says, "shall prevail over any other act," in spite of the comments you made about unions already being covered under the Labour Relations Act. Do you have a comment about how we square off some of these contradictions because where it serves them, they can be incredibly bureaucratic and draconian, but where it doesn't serve them, they simply label things draconian, bureaucratic and so on. Do you have a comment on that quickly?

Mr McClellan: Only that there's duplication here. It seems kind of stupid to have to file disclosure information with the Ministry of Labour on the one hand, and then file the same information with the Ministry of Finance. On the one hand, the Ministry of Labour has procedures for enforcing disclosure; on the other, the Ministry of Finance doesn't, except if the union in question is receiving a government transfer payment. Then you're back to square one because if a union is receiving a transfer payment and it meets the threshold of Bill 26, the disclosure requirements apply.

I don't think this is very well-thought-out. I would go back to Mr Pagnuelo's suggestion and I agree with his basic premise that anyone who is receiving a public benefit, whether it's a tax expenditure or a tax write-off or whatever should comply with the disclosure provisions. That leads you to say all corporations with share capital that are publicly traded should be covered by the bill as well, otherwise why are you singling out the labour movement?

Mr Len Wood (Cochrane North): Gilchrist had a dream.

Mr R. Gary Stewart (Peterborough): It says here that the annual audited statement is readily available to all union members. Is that not sent out to all union members on a yearly basis, or do they have to request it?

Mr McClellan: The requirement is, as set out in the Labour Relations Act, that it's available upon request. All unions have annual general meetings, conventions. There's always a report of the treasurer; the treasurer's report contains the audited financial statements the same as any other corporation. So the existing accountability provisions with respect to the audited statements are all set out in law as they are for —

Mr Stewart: Of course, most corporations, sir, do send it out to the shareholders and so on, and I assume that your membership would be classed as shareholders within your —

Mr McClellan: With respect, unions are not incorporated under the incorporations act, they are established under the terms of the Labour Relations Act and are required to comply with —

Mr Stewart: Yes, I appreciate that. I guess my concern is, if I'm a member of a union and I'm paying in

all the time, why would I not get a statement on a yearly basis from the corporation or whatever you wish to call it that I contribute to without having to request it only?

Mr Len Wood: Just show up at one of the union meetings.

Mr McClellan: Bill 53 doesn't do that either.
1040

Mr Young: If a member of a union objects to the pay, the salary and benefits of a union leader, how can they try to effect change, how can they have a voice?

Mr McClellan: They have a much better chance than a minority shareholder.

Mr Young: How do they do that?

The Chair: Thank you very much, Mr Young. Mr Bartolucci.

Mr McClellan: They do it at conventions.

Interjection.

Mr McClellan: That's ridiculous. That's preposterous. They're democratic organizations. They do it the way that any democratic organization —

Interjection.

The Chair: Mr Young, we've moved on. Mr Bartolucci.

Mr Rick Bartolucci (Sudbury): Thanks Mr Chair. I appreciate it. Thank you very much for your presentation. Being a member of a federation, an affiliate, I am a card-carrying union member. When I read the intent of Bill 53 I see the intent as being punitive — clearly, no question. I have trouble rationalizing what the mover of this bill is trying to suggest.

But let me ask a very simple question, and it's a follow-up to Mr Young's question. There is a process in place in section 92. You might want to explain to Mr Young exactly what happens when someone isn't satisfied with the reporting and outline that there is a very, very significant structure in place for that.

Mr Young: That wasn't my question. I said how can they effect change.

Mr McClellan: Again, I touched on it, and I'd invite the members to read sections 92 and 93 of the Labour Relations Act because they detail an obligation to disclose a right of access to any trade union member to the Ontario Labour Relations Board, so if Mr Papatello is — I'm sorry. Mr Bartolucci. My apologies.

Mr Bartolucci: I only wish I was as tall as Mrs Papatello.

Mr McClellan: I can't see a thing without my glasses.

Mr Stewart: You're too short, Rick.

Mr Grandmaitre: And he's got hair on his legs.

Mr McClellan: My apologies, Mr Bartolucci. Any member can take a complaint to the Ontario Labour Relations Board and the Labour Relations Board, if it feels the complaint has merit, will investigate the complaint with the full power and authority of the Ontario Labour Relations Board. They have the power — it's a judicial power — to order compliance. So we've empowered the Labour Relations Board as the labour court. We've set out the obligations in the act and we've empowered the board to enforce the act. That has a lot more teeth than the provisions of Bill 53. So before you pass Bill 53, I would invite you to consider the overlapping jurisdiction issues very carefully and also to under-

stand whether universal disclosure is a Pandora's box that the government wants to open.

The Chair: Thank you very much, Mr McClellan.

Mr Grandmaitre: Mr Chair? Five seconds.

The Chair: The time is up. We appreciate your apologies to Mr Bartolucci but it's even more important that we apologize to Mrs Pupatello.

Mr McClellan: I'll do that myself.

The Chair: The researcher has some information that's being photocopied. Let's recess until 11 o'clock. The clerk has some amendments that she needs to look over. The amendments in fact are admissible, so she needs some time to do that. We think we have a subcommittee meeting at 11, but we're not exactly sure about that.

Mr Marchese: We have plenty of time to finish this up this afternoon.

The Chair: As scheduled, we will do clause-by-clause beginning at 3:30 this afternoon. We're recessed till 3:30.

Mr Stewart: Mr Chairman, just before we recess I'd like to ask a question, and possibly I'm going to appear very, very stupid, which I'll say before anybody else does. I had no realization that we gave any appreciable amount of money to the union movement — the government. Can the researcher furnish me with the information as to what the government would give to the union movement on a yearly basis? Is it appropriate to ask that?

Mr Len Wood: Check your income tax form. It's written right on there.

The Chair: I think that's an appropriate question. I don't know whether the information is available or not.

Mr Stewart: I guess my concern is that when I look — I appreciate we gave some, but I just would like very much to know how much.

Mr Avrum Fenson: Do you want it today?

Mr Stewart: Yes, if that's possible.

The committee recessed from 1046 to 1709.

SUBCOMMITTEE REPORT

The Chair: Before we move into the clause-by-clause discussion of Bill 53, I'd like to report on the report from the subcommittee, which met two or three times today to set the format for how we will go forward in the summertime to do the rent control consultations. I will read this into the record and we can have a motion then have some discussion on it.

"Your subcommittee met on June 27, 1996, and recommends the following with respect to the consultation paper on rent control:

"1. That the committee advertise in all English daily newspapers in Ontario and the French-language dailies in Ontario on Monday, July 8, 1996.

"2. That the deadline for witnesses to request to appear before the committee is Monday, July 22, 1996 — that allows two weeks.

"3. That the deadline for all written submissions to the committee is Friday, August 30, 1996.

"4. That public hearings commence on Monday, August 19, 1996, at 1 pm in Toronto the first week.

"5. That in that first week of hearings the committee meet Monday through Thursday, 1 pm to 9 pm, and Friday, 9 am to 5 pm.

"6. That the committee invite the minister and ministry staff to appear on the first day of hearings on Monday, August 19, for a one-hour briefing, followed by a 30-minute response from each of the opposition caucuses.

"7. That in the second week the committee travel to Thunder Bay, Sault Ste Marie, Ottawa, Peterborough and Hamilton, and in the third week the committee travel to Windsor, London and Kitchener, in accordance with the summer meeting schedule of the House leaders.

"8. That all witnesses are allotted 20-minute time slots.

"9.(a) That three quarters of the time slots available for scheduling of witnesses are to be divided between the three caucuses and to be scheduled from the master lists;

"(b) That the remaining time slots available are to be scheduled from the responses to the advertisement and phone-in requests drawn from the lottery determined by the Chair and the clerk of the committee;

"(c) That in each location that the committee meets, two alternate witnesses are chosen from the lottery, to be contacted in case of cancellations;

"(d) That in the case of cancellation from a caucus witness list, the clerk would contact the caucus for the alternate names.

"10. That the clerk of the committee provide the subcommittee with the list of witnesses who have contacted the Clerk's office by Wednesday, July 24, 1996, at 4 pm.

"11. That each caucus provide the clerk of the committee with their list of witnesses to be scheduled by Friday, July 26, at 4 pm.

"12. That the Chair and the clerk of the committee have been authorized to schedule witnesses commencing Monday, July 29, 1996.

"13. That the researcher provide background information and provide weekly summaries of presentations.

"14. That authorization is given to the clerk in consultation with the Chair and/or subcommittee to deal with any outstanding matters that may arise concerning public hearings, scheduling, travel arrangements and report writing."

I would request that someone move the report.

Mr Derwyn Shea (High Park-Swansea): So moved.

The Chair: Any discussion on the report?

Mr Gilchrist: Mr Chairman, I propose you amend your first section, that advertisements be placed only in those communities where the committee is going to be attending and that an advertisement also be placed on the parliamentary channel, which obviously reaches into every single home in this province that has cable or satellite TV. The precedent is that the standing committee on resources development will be doing just that for the purpose of travelling at exactly the same time on the Employment Standards Act.

Interjection.

The Chair: I guess we always do it on the parliamentary channel.

Mr Gilchrist: But if you go according to the motion you have, it's well over \$20,000 expense and the practical reality is that if the committee is not going to a particular town, it begs the question whether it's money well spent on behalf of the taxpayers.

The Chair: Mr Shea, did you want to explain the reasoning?

Mr Shea: I think the reason the subcommittee has said to do it this way is they recognized the cost involved, but we thought it was worth the additional expenditure because we were seeking the widest possible input at this time, and the committee will be as aware as I that we will be drawing on reactions not just personally but also in writing. The parliamentary channel may not be something that people pick up on, but certainly one ad in the paper, which is often done by other committees, is not untoward in this instance, this being a particularly important issue for so many Ontarians. I must say I concur with the decision of the subcommittee.

Mr Gilchrist: We'd be prepared to at least ameliorate it that in a community such as Toronto it be left up to the Chair to place an advertisement in only one English-language newspaper. I don't think a lot is served by — we have three major papers in this city. I think it should be up to the Chair to select one.

Mr Shea: Is there a precedent for that, Mr Chairman?

The Chair: There's a precedent for doing what Mr Gilchrist suggests. Basically, what we agreed to is there is a standard advertising protocol that the Clerk's office uses and we have agreed to abide by that, since it is a very broad issue.

Mr Shea: I would be comforted to stay within the guidance of the clerk. If there is a precedent that guides us in that regard, I'm comforted by that.

Mr Young: In the Bill 26 hearings, I had a concern with the fact that a number of the delegations that appeared were branches of the same organization. For instance, I think we heard nine times from the Canadian Auto Workers. We heard from the firefighters a number of times. One of the firefighters' spokespersons we were actually going to offer a ride on our bus as we went from town to town to save him gas money because we heard from him so many times. It was the identical, same message in both cases from both groups.

What I wanted to suggest, if it's agreeable to the committee, is that, first, we ask that no organization be allowed to appear more than once: give their submissions in writing, but only be allowed to appear once throughout the hearings.

The second part is that a number of the groups that appeared, I'm questioning their credibility. I won't name any names because it's not necessary for my point, but they appeared to be ad hoc committees that came together, which is their right. But I wondered if we could ask those committees, anyone who comes to appear, to provide a list of their members and tell the committee how their membership has empowered them to give this message. What I'm concerned about is that people come and say they represent a group, and they have not consulted with that group at all. So I'd like to make a motion that the committee make this part of this process, both these suggestions.

The Chair: So you want to add this as another condition, that nobody be allowed to present more than once?

Mr Young: Exactly.

The Chair: And that anybody who does ask to meet as a group give us a list of their membership?

Mr Young: Give us a list of their members and tell us how their membership empowered them to appear with the message they are presenting.

Mr Len Wood: I don't really understand why a motion like this would come forward. We put out advertisements through the radio and newspapers and people come forward, phone in, and the clerk of the committee gets the names. Then the subcommittee decides how many people or how many groups it can put on. It doesn't interest me whether a person is representing himself and his wife or whether he's representing himself and his family or whether he's representing 10 or 15 people. That shouldn't be the concern of the committee. The committee can decide. If 1,000 people say they want to make a presentation and you can only see 500, you fill in the list and that's the way it is.

A motion of this kind, I don't understand why we'd even think of bringing something like that forward on this because, like I say, the subcommittee makes the decision on the presenters, who they are. Who they're representing, whether they've consulted with them, whether they have a decision, I mean, we've seen all kinds of legislation brought forward over the last year that there's been no consultation on whatsoever; it's just a matter of the Premier and a couple of other people saying: "Well, I think it's a good idea. We'll pass it, ram it through."

The Chair: The one thing I didn't say, by the way, was that the subcommittee did agree unanimously with this report. I neglected to mention that.

Mr Marchese: I was about to comment. I'm assuming, for the record, the subcommittee report was proposed.

The Chair: It has been read in and it was moved by Mr Shea.

Mr Marchese: Okay, and then some members are expressing some possible disagreement about what we have decided?

The Chair: Right.

Mr Shea: No: some conditions, additions.

Mr Marchese: Some additions? We had talked about this very issue that he's raising in the subcommittee.

Mr Shea: This is the first time I've heard this. It's just on the floor now.

Mr Marchese: Okay. So do we have a motion that you might read again?

The Chair: Yes, we do. We have a motion made by Mr Young that we add another condition.

Mr Young: Two conditions, actually.

The Chair: Two conditions: that a presenter only be allowed to present once, in one location, and that a group that asks to make a presentation be required to provide us with a list of their membership.

Mr Young: And explain how they have consulted with their membership and that they represent their membership's views.

1720

Mrs Sandra Pupatello (Windsor-Sandwich): For heaven's sake, that's ridiculous.

Mr Young: You didn't sit on Bill 26.

Mrs Pupatello: Yes, I did. The taxpayers' coalition didn't have to have membership lists here.

Mr Marchese: Give him the list for a second, please.

The Chair: Let's keep to one person at a time.

Mr Marchese: That's the purpose of the subcommittee usually, to iron out differences if there are any, and we presumably canvass our members so that we can avoid

these kinds of things, so that we don't have a subcommittee meeting that ends up lasting a whole long time. So I'm surprised this comes up.

The issue that he raises is in my view highly bureaucratic and complicated, particularly the second part. The first part I don't mind. I think that one person having to present in several places at the same time is a problem and I don't support a person speaking in Toronto and speaking in Hamilton, wherever, because if we've heard one person speak once, it's enough. That I have no disagreement with. We could probably, through the process of what we've got in terms of names and the fact that we will have all of those lists in front of us, see whether or not the same name might appear again somewhere else, so we can easily deal with that.

But the second part is complicated, where he says we need the group to list its members and then we need to know how their members are — I'm not sure — selected or consulted. What a nightmare. Why would anybody ever want to do something like that?

Mr Len Wood: We're in a democracy; we're not in a dictatorship.

Mr Marchese: I'll probably get back on the list after we get some clarification, if any. But I think this is incredibly unnecessary to do and we can and should avoid it. The purpose of the subcommittee is to avoid such things, and this is unnecessarily complicated.

The Chair: Rather than discuss this, because we have some other business to attend to, is anybody opposed to calling for a vote on these two issues?

Mrs Pupatello: Yes.

Mr Marchese: No, no. What vote? No, I'm sorry. I don't know if other members want to speak to it. If they don't want to speak to it, I have more to say.

Mr Mario Sergio (Yorkview): There's a little bit of confusion I understand, but I was told by our member here, Mr Kennedy, that the subcommittee had agreed on everything as was discussed and for me to vote accordingly as if he were to be present. This is exactly what you, Mr Chairman, had told me prior to coming to the meeting.

I frankly am not prepared, let alone that I cannot vote, to sit at committee and support the changes as proposed in recommendation number 1 with respect to the advertising of the hearings. Mr Kennedy must have good reasons as to why he would like to have the number of hearings advertised in different papers and perhaps in different languages.

I certainly do not agree myself that notification be placed only in one English-language newspaper, probably, I would suggest, at the choice of the government. I do not support that and if that is the case, and the committee wishes to go ahead, then I would request the necessary half-hour, whatever that is, to try to get in touch with Mr Kennedy.

Following the guidelines, then it would be the guidelines according to the procedure of the government Legislature and I would like to know what it is prior to the committee voting on it, since there are changes to the former agreement, to the agreement of the subcommittee. I believe that once the subcommittee agrees on something it should not be changed.

The Chair: Just to clarify a point here, the Clerk's office does not have the right to ask a presenter, a person who asks to make a deputation, any information about the makeup of their group, their mandate or anything. So based on that, there's no way we can get at the information that Mr Young was looking for.

Clerk of the Committee: And they don't have to tell us either.

The Chair: And they don't have to tell us even if we could ask them. So there's no way we can get at that.

Mr Young: I will withdraw that part.

The Chair: Okay. So we're dealing with just the one issue about only allowing each deputant to make a presentation in one location. Anybody have any more discussion on that specific issue? Mrs Ross, did you have anything to say on the issue of one opportunity to speak only? The other issue has been withdrawn.

Mrs Lillian Ross (Hamilton West): Yes, I did. On Mr Young's motion?

The Chair: Yes. The other one's been withdrawn, the other part.

Mrs Ross: The second part's been withdrawn?

The Chair: Yes.

Mrs Ross: Oh, okay. Well, I'm pleased with that. I could support the first part, because I think it's good to get as many people involved as we can, but I'm opposed to the second.

Mrs Pupatello: In that first portion, are you suggesting, for example, there might be a Canadian organization, and the provincial counterpart of that group would be considered part of the Canadian and therefore if both were there they could not both be on the list? Or in another example, if there's a provincial organization and then various chapters across Ontario, there's only one across the board that would be allowed to speak on behalf of that community? Is that the intent?

The Chair: I'll ask Mr Young to clarify what he meant.

Mr Young: The example I used was the provincial firefighters' association that we heard from on Bill 26 in a number of different venues. Another one was the Canadian Auto Workers. We heard from them nine times. The NDP had submitted them in those locations, yet all we heard was complaints that we hadn't heard from enough people. Why would we listen to the Canadian Auto Workers nine times when there are others who might have a different view or a different concern? I want to hear from as many groups as possible and not hear repeatedly from the same groups. That was the source of my motion.

Mrs Pupatello: Now that I have that clarification, the point I need to make in that regard is that, depending on what community you live in, the issue of rent control is very different. When you're in Windsor, where there is practically a zero vacancy rate, the issues for tenants in my community are significantly different from Markham, had Markham eventually ended up on the list. So organizations that are representing that group, whether they be part of a provincial organization, especially because the topic is rent control, it is a regional issue — very much so. So you cannot deny those people an opportunity to speak, because in many cases those tenant organizations

represent a huge population that we need to hear from on this bill.

Mr Len Wood: On the same issue, I attended some of the hearings on Bill 26, and in different parts of the province, whichever region you go into, I'm sure we're going to run into the same problems with rent control and tenants' associations. Tenants and landlords in Kapuskasing, for example, are different as night and day than they are in Toronto or in Stratford or some of the other areas.

I know Mr Young says the Canadian Auto Workers came forward nine times. If you go into some areas, you might have the IWA or the CEP which might want to make 20 different presentations, but they're representing 20 different interests. Their interests in Toronto are different than what they are in a northern community or in a southern community. Just because you might see the IWA or the CAW or different tenants' associations or landlords' associations wanting to make presentations, it doesn't mean that their presentations are all going to be the same.

I think it's very unfair that those comments would come out. If we're talking about an individual person making a presentation nine different times in nine different communities, yes, I can understand that, but if you're talking about organizations, as Mr Young was talking about, these organizations are different in different regions all over the province, as they are all over Canada, and their views, coming from different regions, are going to be quite different — I would say as different as night and day. You could get 100 different views.

The subcommittee is the one that should be looking after that. As far as what the memberships are and all that, I know that he's withdrawn that, but even this motion, I don't think it should stay. I think that should be dealt with within the subcommittee and if there's a problem at committee of the whole, it should go back to the subcommittee again to make a decision on that rather than having motions come up of this kind. I could sit here and talk till midnight, but then Rosario would have to take over at midnight and carry on until 2 o'clock in the morning. I'm sure you don't want to hear that. So I'll give my spot to Rosario right now.

1730

Mr Shea: I understand what Mr Young is trying to get at and I don't think anybody around here would object to it in its most general sense. But I think the subcommittee has found a very useful and appropriate compromise that respects the process. It identifies the access of all the stakeholders, either through the individual caucuses or through the general list and chosen by lottery. I don't think anything could be more open and more fairly disposed.

It would strike me as being more appropriate that if we suddenly determine that we've got some difficulties, this document also empowers the Chair and the clerk and indeed the subcommittee to meet and talk about it and come back and make some advice to the committee. So I would suggest that what we have before us now is sufficient and that we be mindful of Mr Young's concern and we keep a watching brief on it, but not go any further at this time.

The Chair: Any further comment or can we call the question?

Mr Marchese: I just think it's completely unnecessary. As Mr Shea pointed out, we had talked about it in committee and we thought it was difficult to police this particular matter and that it wasn't useful to have to spend the energy to do that. We then agreed on a process that would have all the parties from the list identify individuals they would want to present and that 25% of that list would come from the general public based on the lottery system. I also feel that from that we would be able to see whether there were duplications of names and possibly deal with that in subcommittee and with you and the clerk.

I'm not sure whether this motion is necessary to do. I certainly don't agree that if we should have a provincial organization or a national organization that has affiliates, to then simply say to those people in those regions, "I'm sorry, we already heard from your national or provincial organization." I don't agree with that. I think in his clarification, Mr Young said, "Yes, we mean that as well." I thought he was referring to individuals, which I don't mind, but I believe we can deal with that through the subcommittee process, the clerk and yourself as the Chair, because no one here, I presume, would want the same individual to speak two or three times. I think that we can take care of that without having to have such a motion.

The Chair: The first thing we'll do is deal with the amendment that Mr Young proposed. All in favour of the amendment?

Mr Len Wood: Can we have a written copy so we can study it?

The Chair: It was moved that the subcommittee report be amended to state that a presenter only is allowed to appear in one location.

Mr Len Wood: Can we have a written copy of it so we can study it before we vote?

The Chair: You don't need one.

Mr Len Wood: There should be some thought going into —

The Chair: I think it's a fairly simple —

Mr Len Wood: There should be some thought going into somebody bringing forth a motion here, not something off the top of his head that he just thought of on the spur of the moment. We should have time to study it before we vote on it.

The Chair: I think we've discussed it enough, Mr Wood. All those in favour of the motion? All those opposed? The motion is defeated.

Okay, the balance of the report of the subcommittee, any more discussion on it?

Mr Sergio: I think you should clarify point number 1. As I mentioned before, I have no idea, like my colleague here, with respect to the changes in the advertising procedure.

The Chair: Our plan is not to change from the standard procedure as outlined by the Clerk's office, which is to advertise in a standard number of papers.

Mr Sergio: Is the Clerk's procedure according to clause number 1 here?

The Chair: Yes, it is.

Mr Marchese: I beg your pardon. Sorry. That hasn't changed, has it?

The Chair: No. There are no changes at this point. On the subcommittee report, all those in favour?

Mrs Papatello: Sorry, what are you voting on now?

The Chair: On the subcommittee report. Mr Shea moved adoption of the subcommittee report. All those in favour? Opposed? The report is adopted.

Now we get on to our business of clause-by-clause analysis of Bill 53.

Mr Gilchrist: The government House leader has a motion to consider extending the last formal sitting day of the House, which would include committees.

Clerk of the Committee: Not tonight, no.

Mr Gilchrist: Because I asked the question —

Clerk of the Committee: Committees are not authorized to sit. They can only sit up to 6 o'clock. You can ignore the clock if you —

Mr Marchese: Tonia, I'm sorry. I'm having a hard time hearing.

Mr Gilchrist: No, that's fine.

Mr Marchese: This room is a terrible place.

The Chair: Basically, the issue that we're discussing is whether we're empowered to sit beyond 6 o'clock. There seems to be some confusion as to whether we are.

Mr Gilchrist: I'm fine.

The Chair: Basically we sit till 6 o'clock and then we adjourn.

Mr Len Wood: See you in October.

The Chair: That could be a good title for a song.

LABOUR UNION AND
EMPLOYEES ASSOCIATION
FINANCIAL ACCOUNTABILITY ACT, 1996
LOI DE 1996 SUR LA RESPONSABILITÉ
FINANCIÈRE DES SYNDICATS
ET DES ASSOCIATIONS D'EMPLOYÉS

Resuming consideration of Bill 53, An Act to Promote Full Financial Accountability of Labour Unions and Employees Associations to Their Members / Projet de loi 53, Loi visant à promouvoir la responsabilité financière complète des syndicats et des associations d'employés envers leurs membres.

The Chair: We're into clause-by-clause analysis of Bill 53. Everyone has a package of amendments that's been presented to you. We also have, presented by the research branch, some background information that people asked for.

Mr Marchese: Is Mr Fenson going to go through this or is it just all this work for —

The Chair: There's much for him to go through.

Mr Tascona: Read it.

Mr Marchese: I beg your pardon?

Mr Gilchrist: From my understanding, the procedure's quite clear. If the member from the third party wishes to introduce an amendment, he reads it into the record. If there's any discussion, great, and then we call the question.

Mr Marchese: The research person has put this on the table. That's the matter we're dealing with at the moment.

The Chair: Yes. We asked for some background information.

Mr Marchese: Right. Somebody asked for this and it's being laid here. I'm not sure anybody has read it, because this was laid on the table just a short while ago.

Interjection: That's right.

Mr Marchese: It would be useful — not for the purpose of just delaying this, but wouldn't it be useful for the research person to tell us what's here?

The Chair: If we would like to do that, the question is whether we want to go into that or whether we want to get on with clause-by-clause. I'm easy. I'll do it any way you want. Would you like the research department to tell us what's here?

Mr Marchese: No, I'm making a point. Right? I don't mind going through clause-by-clause and finishing it before 6 o'clock, because I think I can make those arguments before 6. I don't need to delay it any further than that.

But I have a problem. We asked research to come up with a great deal of work here. We may not come back to this if we adjourn today and deal with these amendments and it seems awfully odd that we should have a lot of work and we're not familiar at all with what he's presenting to us. It seems strange.

The Chair: Did you ask for it, Mr Stewart?

Mr Stewart: I asked for it. I don't like it, but I'm satisfied with the report.

Mr Marchese: You said you are satisfied with it?

Mr Stewart: Not with the content of it, but I'm satisfied with the report.

Mrs Papatello: May I get a synopsis from research, please?

The Chair: Mr Fenson, can you do that, a thumbnail sketch of what's in here?

Mr Fenson: Yes. The large package describes the reporting requirements under the Securities Act which were introduced by regulation in 1993. They changed the requirements so that the individual salaries of identified highly paid officers of corporations that are publicly traded be disclosed and be printed in prospectuses before stocks are distributed and in annual reports and in distributions to shareholders.

1740

Mr Gilchrist: Excuse me, Mr Chair. Did Mrs Papatello request a synopsis of the report or the entire bill?

The Chair: A synopsis of the report.

Mr Gilchrist: I'm sorry, but it sounds like the research assistant is giving a background of the NDP's previous attempts at salary disclosure.

The Chair: Mr Gilchrist, he's providing what he was asked to provide.

Mr Gilchrist: There was no request made for a synopsis. Mr Stewart asked only about how much money was paid by government to trade unions.

Mr Stewart: I also asked —

Mr Fenson: I'm sorry. There are two pieces of research I was asked to do for the committee, and I was simply going through —

The Chair: He's now explaining those, as requested by Mrs Papatello, and that is quite fine for him to do that. Carry on please, sir.

Mrs Papatello: For clarification, Mr Chair, if it is provided to us, why would we have research go this effort if we're not going to take the time to at least see what the result was? Have I missed something?

The Chair: Excellent question. Carry on, please, Mr Fenson.

Mr Fenson: This memo essentially is just a description of that provision which was brought in by the NDP in 1993 to increase the salary reporting required under the Securities Act, which up to that point had simply been generic and didn't require identification of the individual officers whose salaries were being described.

As I mention in this, it was followed by several private members' bills by Conservative members asking for similar disclosure from unions and the public service. It's just a brief history of events in the House on the subject of salary disclosure in late 1993.

The other memo is the result of a question put to me this morning as to whether provincial money is given to unions —

Interjections.

The Chair: I believe it was a government member who asked these questions. I'd appreciate it if you'd listen to the answer.

Mrs Papatello: Just before you go on, can we go back to this larger one? The description you have on page 2 with the changes of the regulation, is it now exactly the same kind of regulation change in requirements that would be required of the unions as was brought in in 1993?

Mr Fenson: They're similar. It's not —

Mrs Papatello: What areas are different? Is that itemized? Maybe you can show me where that is.

Mr Fenson: They're different, in part, because this refers to the kind of compensation given to executives, which includes things like stock options, loans from the corporation, things which are peculiar to the securities industry in the kinds of compensation, or rather to publicly traded companies. Some of the elements simply are not present in the union thing because union executives are not given union stock and so on. To that extent, they're not perfectly parallel.

Mrs Papatello: But the requirements are similar.

Mr Fenson: The requirements are similar. I guess the other difference to point out is that this is done specifically to arm prospective purchasers of publicly traded stock with knowledge. It's a securities thing, and there isn't really an exactly corresponding purpose one can point to in unions because it's not a question of protecting purchasers of stock.

Mrs Papatello: That was this first one. And the second one?

Mr Marchese: On this particular one —

The Chair: On the first one, okay.

Mr Marchese: — I want to see if this relates at all. Mr Fenson, Ross McClellan came this morning and made a number of arguments. He said:

"Under Bill 26, a public sector employer, as defined in section 2 of the Public Sector Salary Disclosure Act, whose organization receives government transfer payments is required to disclose the names of anyone who receives salary and benefits above \$100,000 a year. An

employer is considered a public sector employer for the purposes of the Public Sector Salary Disclosure Act if his or her organization is currently in receipt of government funding...of \$1 million or an amount equal to 10% of gross revenue above a minimum of \$120,000.

"It is only under these specific and limited circumstances that non-governmental bodies are required to comply with the disclosure provisions of Bill 26."

Then he makes other arguments and says that the labour movement is fully covered by the provisions of Bill 26 already, and "Bill 53 is not a simple extension of the provisions of the Public Sector Salary Disclosure Act at all."

Does your research cover this particular matter?

Mr Fenson: It's covered in the same sense that under the statute created by Bill 26, if the government grant is high enough or if it's a high enough proportion of a union's revenue, then it probably would be considered, but that means there are unions which are not covered. I have not had time since I was asked the second question this morning to identify unions which may be brought into the act by virtue of the size of the grant. I'm not even sure there are any direct grants to unions which would bring them under the provisions of Bill 26. It may be that there are no unions which have to report their executive salaries because of Bill 26.

Mr Marchese: He also mentions:

"During the second reading debate the member for Scarborough East said: 'Bill 53 was inspired by this [Bill 26] standard of accountability and, subsequent to the release of the salary information in the public sector, I had no fewer than three close union friends separately question why neither our government nor the NDP had applied the same standard to trade unions and employee associations. I had to admit to them there was no good reason I could think of why these organizations had been left out.'"

Mr Fenson: I think the truth is that Bill 26 does not require all unions as a category to disclose. Unions only come in if they are in receipt of grants over a certain threshold. I think most locals would not come under this, and I don't know for certain that any unions have received a grant of the sort that would bring them under Bill 26.

Mr Marchese: Yes, we're not certain of that, but some could be covered and some might not. That's the point.

Mr Fenson: In principle, it's possible. Whether there is I have not had time to ascertain. What I've identified in the shorter memo, in the memo which doesn't have the thick attachments, is that there have been grants to the Ontario Federation of Labour and there has been a large grant to a workers' health centre which is closely allied with the unions, but I don't know if it was given such that any individual union would have money attributed to it. It may and it may not. This question was just put to me this morning.

Mr Young: I had a comment referring to the same report from the Ontario Federation of Labour, on page 4. The researcher might comment. It says, in paragraph 5, "To repeat, the labour movement is fully covered by the provisions of Bill 26 already." I can't imagine what he means by "the labour movement." That is not any kind of

corporate entity; it's not any kind of entity at all. It's a term; it's a phrase. Can you comment on that please?

Mr Fenson: My understanding of what that could reasonably be taken to mean is that labour organizations would be required by Bill 26 to disclose the salary of highly paid executives if they are in receipt of either a \$1-million grant or a grant which exceeds 10% of their gross revenues. In principle, they're covered, but I'm not sure that in practice it triggers any requirements in unions.

Mr Young: So from your research there is no union or labour movement organization that has to date received this kind of money from the province of Ontario?

Mr Fenson: I can't say that it's not been the case, but I have not ascertained with any certainty that grants —

Mr Young: Because I certainly don't know of any, and that would certainly make untrue that statement, "The labour movement is fully covered by the provisions of Bill 26 already."

Mr Fenson: It's covered in the sense that law-abiding citizens are covered by the Criminal Code, which forbids murder. The law can apply to them.

Mr Marchese: I think the point was that they are covered, not not covered; they are. The question Mr Fenson raises is that — and I'm not sure whether we did any research — through the limited research that may have been done we don't know who is in receipt of either \$1 million worth of funding and/or an amount equal to 10% of gross revenue. You didn't do that research.

Mr Fenson: I haven't been able to do that during the course of the few hours that I had between the question being put and now.

Mr Marchese: I understand that. So it's quite fair to say that some components of the labour movement are connected?

Mr Fenson: It's possible, but that's all I can say now.

Mr Len Wood: It's impossible for me to sit here quietly and hear Mr Young saying that the Ontario Federation of Labour representative has brought in false information. That was his accusation. In their interpretation, they're saying that Bill 26 has already covered a lot of the areas of the labour movement. When you talk about the labour movement, you're talking about the ordinary working people in this province who pay for membership in whatever body represents them, whether it be teachers or people working in pulp mills or whatever. I'm sure that they did a lot of research on it, and there's been nobody else here to challenge that that statement might be false, so I think it's very unfair for anybody on this committee to accuse a representative in his absence of bringing in false information.

He also went on to explain that disclosure is covered under the Labour Relations Act, that if any individual members and local unions out there want that information, it's available. He went on to point out that there's no reason for this particular bill that is being brought forward whatsoever because all of the salaries are being disclosed.

The Chair: Mr Wood, did you have a question for the researcher? That's basically what we're doing here.

Mr Len Wood: I just wanted to clarify. We have a person sitting on the committee who has said that a representative has brought through false information.

The Chair: I understand that, but we're trying to get some clarification on these issues.

Mr Len Wood: I'm saying that there's no proof here that what Mr Young is saying is reason for him accusing a representative of bringing in false information.

The Chair: Any other questions for the researcher? I might as well waste the last three minutes.

Mr Marchese: Were you here when Ross McClellan made the presentation?

Mr Fenson: I came in just at the end, so I didn't hear it.

Mr Marchese: I was going to ask you for an opinion with respect to what he said around the Ontario relations. If he wasn't here, it would be difficult.

Mrs Papatello: I don't know the general nature of how it arose, the second paragraph on page 2 of this two-piece, when you talked about the different class of benefits to unions, the purpose of what drove you to look for that. There are other organizations and agencies that have the ability to access similar types of benefits; for example, strike support payments that aren't taxable. There would be other kinds of honoraria with charity organizations that are also not taxable.

Mr Fenson: Oh, absolutely.

Mrs Papatello: Could you just tell me in general the purpose of you deriving this portion —

Mr Fenson: I was giving just a broad picture of the kind of benefits that were not necessarily peculiar to unions but that unions enjoyed. I wasn't suggesting that they were the only ones whose members and themselves benefit from tax deductions; it was simply trying to give a range of things which might be construed as benefits from the government, that's all.

Mrs Papatello: That was just in line, in keeping with grants and other benefits specific to government, and you just carried on?

Mr Fenson: That's right, yes.

Mrs Papatello: I'm just thinking there may have been some other purpose for deriving that kind of information.

Mr Fenson: No, it's not a suggestion that they were unique or special favours.

Mr Marchese: Mr Fenson, are you familiar with the Ontario Labour Relations Act?

Mr Fenson: In part.

Mr Marchese: I thought Ross McClellan — I was chatting with somebody at the time — made some other remarks. I think we were talking about the fact that we're covered in terms of audits and/or disclosure; I don't quite recall whether he said that as well.

Mr Fenson: I'd really have to check before I spoke to that. I can't tell you what precisely — I know there are no salary disclosure requirements, but I would really have to check.

Mr Marchese: But in terms of audited statements, that's something they would be required to do, as Mr McClellan — but you're not quite sure.

Mr Fenson: I'm really not; I can't speak off the top of my head.

The Chair: From my vantage point, it's 6 o'clock, and failing unanimous agreement to carry on, the committee is adjourned.

The committee adjourned at 1800.

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**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Bartolucci, Rick (Sudbury L) for Mr Sergio
Gilchrist, Steve (Scarborough East / -Est PC) for Mr Flaherty

Also taking part / Autre participants et participantes:

Shea, Derwyn (High Park-Swansea PC)

Clerk / Greffière: Tonia Grannum

Staff / Personnel:

Avrum Fenson, research officer, Legislative Research Service
Cynthia Smith, director, Legislative Research Service
Michael Wood, legislative counsel



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Première session, 36^e législature

Official Report of Debates (Hansard)

Monday 19 August 1996

Journal des débats (Hansard)

Lundi 19 août 1996

**Standing committee on
general government**

Rent control

**Comité permanent des
affaires gouvernementales**

Réglementation des loyers d'habitation



Chair: Jack Carroll
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LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON
GENERAL GOVERNMENT

Monday 19 August 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO
COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Lundi 19 août 1996

The committee met at 0902 in room 151.

RENT CONTROL

The Chair (Mr Jack Carroll): Good morning, everyone. Welcome to the standing committee on general government and our meetings on proposed changes to the rent control legislation.

MINISTRY OF MUNICIPAL AFFAIRS
AND HOUSING

The Chair: Our first order of business this morning is to welcome the minister, Al Leach, to give us a presentation and explain exactly his proposals. Mr Leach, the floor is yours.

Hon Al Leach (Minister of Municipal Affairs and Housing): Good morning, Mr Chairman, ladies and gentlemen. It's a pleasure to be here after a nice, relaxing July. I hope everybody enjoyed their summer to date because it looks like we're going to get right back to business.

Thank you for the opportunity to open the public hearings into the tenant protection package proposed by the government.

Let me begin by expressing in advance to the members of this committee my appreciation for the many long hours you will no doubt spend on the issues as you travel across the province in the weeks ahead.

Our government is committed to the democratic process and in particular to the exercise of democracy at the grass-roots level. Following my comments this morning, the staff of the ministry will make a presentation on the details of the tenant protection package which I believe you will find extremely informative.

During the past year I've met with a great many tenants and property owners to seek their views on the housing situation in Ontario. During those meetings two things became abundantly clear to me: (1) The current system doesn't work for tenants and it doesn't work for property owners; (2) Tenants and landlords are never going to completely agree on how to fix it, yet at the same time both tenants and landlords are confronted with a system which is seriously flawed. Here are just a couple of examples:

More than 10% of all rental stock needs substantial repair work and more than \$10 billion in repairs is needed to rental buildings across Ontario.

There are any number of apartment buildings in this province with literally dozens of work orders for maintenance and there are several buildings with hundreds of such work orders.

Unless we fix the system, property owners won't invest in buildings and they will not build new rental units. They mean what they say. Last year only 20 private sector rental units were built in the city of Toronto.

Vacancy rates in many of our cities are extremely low. With no new apartments being built, tenants have fewer and fewer choices about where they live. The system has to be changed. For tenants, no change means no choice.

It can take months to have a basic dispute between a tenant and a landlord or a tenant and a tenant settled in court.

Yet, when we bring these obvious problems to the attention of tenants and landlords and we ask for solutions, tenants suggest imposing absolute, ultrastrict rent controls that will ensure property owners can't get a dime. Landlords, on the other hand, suggest getting rid of the entire rent control system and all the regulations that go with it.

I have no doubt that the members of this committee will hear those same sentiments repeated many times as they travel across the province in the weeks ahead. It's the "Just give us everything we want" solution. Ladies and gentlemen, our government will not be giving either side everything they want, but what we're going to do is fix the system in a way that is fair and fix it in a way that is balanced.

During the next few weeks this committee will hear many things. You'll hear that the Ontario government is planning to throw tenants to the wolves, that tenants are going to be trapped in their apartments, that tenants are going to lose their homes and that senior citizens are going to be thrown out of their apartments. That is ridiculous, and we all know it.

Earlier this month the government announced the rent control guideline for next year; it is 2.8%. That's unchanged from the guideline of 2.8% this year. There has been some form of rent control in Ontario for more than 20 years, and during all that time the lowest guideline ever is 2.8%.

Why is our government keeping the method by which the guideline is calculated? We're keeping it because it works. It ensures that if a tenant is getting a rent increase, it is a very reasonable and fair increase.

This is not the end of rent control. People will not lose their apartments. The sky is not falling. It is our intention to improve the system for both tenants and property owners. In fact, this is just one part of a comprehensive effort by our government to make things better right across Ontario. The goal is more accountability to the taxpayers, more efficient systems and better government. Our intention is to fix the whole system, not just tinker with changes here and there.

The tenant protection package before this committee changes the Rent Control Act, the Landlord and Tenant Act, the Rental Housing Protection Act, the Municipal Amendment Act, the Residents' Rights Act, the Land Lease Statute Law Amendment Act, as well as the Building Code Act and the Planning Act. Simply the names of all those acts provide a pretty good indication of just how confused the current system is. There's no doubt that most people have no idea whatsoever how some of those laws affect them, or even that they exist.

What we're proposing is a Tenant Protection Act which consolidates everything into one package that is fair to tenants, landlords and taxpayers. The central elements of this package are pretty straightforward: Tenants must be protected from unfair rent increases; buildings must be properly maintained; we must encourage more rental housing to be built; and finally, the entire system must be simplified and made less expensive for the taxpayer.

That's our plan in a nutshell. The most important aspect of our plan is tenant protection. It is fundamental to our approach.

We recognize that many aspects of the current system work well in protecting tenants and we're going to keep those: Tenants will only get one rent increase each year, as they do now. Tenants must be given proper notice of a rent increase, as they are now. Tenants are protected by a cap on rent increases above guideline for capital repairs, as they are now. Tenants can apply for rent reductions for inadequate maintenance or reduced services. Tenants can apply to challenge illegal rent increases and illegal charges, as they are now. These measures are important for tenant protection, and we want to continue them.

What we do not want to continue are those measures which discourage an owner from properly maintaining an apartment building or from building new ones which give tenants more choices in where to live. That's why we're proposing that when a tenant moves out and a unit becomes vacant, the owner is free to set a new rate.

0910

This is an important change, and I want to be clear about our intentions. When a tenant moves out of an apartment, the apartment is obviously vacant. Under the current system, the vacant apartment is locked into a rent which was being paid by a tenant who is no longer there. The current system protects the apartment. I'm saying we need to protect the tenant, not the apartment. We need to protect the tenant as long as the tenant lives in the apartment, but when the tenant moves out and the apartment is vacant, it's vacant. The owner must be free at that point to negotiate a new rent, and when a new tenant moves in, that new tenant is protected by rent control. The rent can only be increased by the guideline, and the tenant has all of the other protections afforded all other tenants.

This change will improve maintenance. The property owner now has an obvious incentive to maintain both the apartment and the building in order to attract a new tenant at a new rent.

I realize there are those — sitting on my right, I think — who would argue that by doing this we have

also created an incentive for landlords to harass tenants in order to get them out of their apartments. Well, it's going to cost landlords a whole lot to try, up to \$50,000, because that's the new maximum fine we're proposing for illegal activities by a corporate landlord. That's double the current penalty. We're also proposing to expand the existing enforcement unit to investigate tenant complaints. We're simply not going to tolerate the harassment of tenants in this or any other manner.

We want property owners to renovate their buildings, extensively if need be. As I mentioned earlier, one of the main problems with the current system is that the housing stock is run-down. It needs at least \$10 billion in repairs. There are buildings in this province which are actually boarded up because the current system prevents the property owner from doing major renovations or redeveloping the site, and that's not helping anyone.

We want owners to do the work and we want the tenants living in those buildings to be protected. That's why we're proposing that tenants in a building which is to be extensively renovated be given extended tenure, and in buildings which are converted, we're proposing that the tenants have the right of first refusal to purchase their units. Make no mistake about it, we're going to insist that landlords properly maintain their buildings by making the penalties for poor maintenance tougher than ever before.

Under the current system, the owner of a building can only be charged for violating a work order. We're proposing to change that and make the violation of a property standard in itself an offence. We're also proposing to give property standards officers more powers to enforce the maintenance and repair of rental buildings and to punish serious offenders of property standards bylaws. We would like to see a new maximum fine in this area of \$100,000, and I hope the members of this committee will agree.

One of the most frustrating and confusing elements of the current system for both tenants and landlords is the method of settling disputes under the Landlord and Tenant Act. Disputes under the act are settled in court, and as we are all aware, the wheels of justice can turn slowly. It's not unusual for tenants and landlords to spend month after month after month resolving a dispute.

We're proposing to create a faster, more efficient process which moves disputes out of the courts and into a less formal system of adjudication. We want to streamline the system so that disputes between tenants and landlords and disputes between tenants and tenants can be settled quickly in a forum where everyone can feel comfortable.

At the same time, we want to continue the valuable protections which tenants enjoy under the Landlord and Tenant Act: Tenants continue to be protected from arbitrary eviction; tenants maintain their right to privacy; tenants must be given proper notice when a tenancy is terminated; property owners remain responsible for keeping their premises in good condition; property owners continue to be limited to collecting only the last month's rent as a deposit and remain prohibited from seizing a tenant's property for arrears in rent.

Our intention is to speed up the process, to make it simpler and easier to understand and, not least of all, to

reduce the backlog in our courts and free up valuable court time.

As I mentioned at the beginning of my comments, one of our main goals in changing the system is to encourage the construction of new rental housing, especially in our larger cities. The vacancy rate has hovered below 2% in many urban areas and is currently below 1% in the city of Toronto. We must create a climate for new rental housing. In order to get developers back into the building business, private rental units will have to be as attractive to build as condominiums or private homes.

Let me be clear. I'm under absolutely no illusion that the changes we are proposing in and of themselves will trigger a boom in the construction of new rental housing, but they do constitute a very important first step in the right direction. In conjunction with the other reforms we will be proposing, these changes will help encourage builders to build.

What our government wants to do is reform a heavy-handed regulatory system that acts as a disincentive to the whole industry. Rent control is just one part of the bigger picture.

We are also looking at the issue of property taxes for rental buildings. In that regard I'm pleased to announce today that I'm referring the issue of property taxes on multi-residential buildings to the Who Does What panel chaired by David Crombie. I'm asking the panel to review the issue and make recommendations to the government on how property taxes on residential buildings can be changed in a way that is fair and in a way that is equitable and in a way that will help stimulate the construction of new rental housing in this province.

As well, we will continue to reduce and streamline regulations associated with development. We've already made a substantial start by taking action to change the Planning Act and we are reviewing the Development Charges Act.

All of these initiatives, combined with the changes we are proposing to the system of rent regulation, take us another step closer to creating the climate for the construction of a new supply of rental housing in Ontario.

Let me end my comments by giving the members of the committee the bottom line as I see it. We now have a system in place which tries to protect tenants, but at the same time it's a system that results in run-down housing stock; it's a system that results in poor maintenance; it's a system that creates low vacancy rates and millions of dollars in additional costs to the taxpayer. What we want to do is to continue to protect tenants while resolving the problems, and that means cutting red tape, improving maintenance, encouraging investment in new rental housing and giving the taxpayers a reasonable system at a reasonable cost.

That's what we're trying to do, and we want to make sure that we get it right. That's where the work of this committee will come in. We're anxious to learn what people think about our proposals and how they feel we can improve them. I look forward to hearing the recommendations of this committee.

I thank you for your attention and I now, Mr Chairman, would like to turn the proceedings over to the ministry staff for a detailed presentation on our proposals.

Ms Anne Beaumont: Good morning. My name is Anne Beaumont. I'm the assistant deputy minister of the housing policy and programs division. I want to thank the committee for inviting ministry staff to make a presentation this morning. Let me introduce my colleagues to you. With me are Janet Mason, who is the director of the housing policy branch, and Scott Harcourt, manager of the existing stock section in that branch.

In our presentation today we'll describe the rental housing market in Ontario, make a few comments on landlord and tenant legislation in the province and then review the proposed systems objectives and provide you with a technical overview of the consultation paper which you have all seen.

Ontario's private rental market consists of approximately 1.3 million rental units in over 300,000 buildings. Over three quarters of all renter households are located in the metropolitan areas of Ontario. Almost 45% of them are in the Toronto metropolitan area.

0920

Many people, when they think of rental buildings, think of high-rise buildings, but in fact only 23% of rental units are found in large high-rise buildings of 100 or more units. About 80% of rental buildings are made up of four or fewer units, and most landlords in Ontario own a small number of units, typically five to nine units in a small building.

Rents generally fall in the range of \$600 to \$800 a month for a two-bedroom unit. In Toronto and Ottawa, the largest markets for rental housing, 75% of the market is at or below \$800 a month.

Forty per cent of all rental households across both private and social housing sectors in Ontario receive some type of housing subsidy from the government. In the private sector, 37% of those households that are not subsidized spend more than 30% of their income on shelter. On the other hand, 40% of tenants pay less than 20% of their income on shelter.

Ontario's rental stock is made up of both conventional and non-conventional supply. Conventional supply is purpose-built rental housing. Non-conventional includes rented houses, condominiums, apartments in houses and conversions of non-rental properties. Since the late 1980s, there's been more non-conventional supply because of more condominium rentals and more apartments in houses. The conventional supply has been mostly non-profit development.

A serious problem, as the minister indicated, from the standpoint of supply is that private rental construction in Ontario is at a virtual standstill. Last year, only 1,420 private sector rental units were built in Ontario. Only 20 of these units were in Metro. That's units, not buildings. At the same time, about 120,000 people moved into the province.

This decline in new supply has led to tightening vacancies in some Ontario rental markets. For example, the vacancy rate in Toronto is currently 0.8%, although there is at the same time a significant turnover of apartments. In other cities, such as Thunder Bay and London, there's a healthier vacancy rate.

Over 60% of the rental housing stock is 25 or more years old. This proportion will obviously grow as the

stock ages and few new units are built. Clearly the need for major repair is closely linked to the age of the housing stock. Older buildings need major investments in large systems. A particular problem is 1960s and 1970s high-rise buildings, which are facing major structural problems related to concrete corrosion in garages and on balconies. Significant investments are also required as a result of government legislation, for example, a fire code retrofit.

Having commented on the stock, let me move to the consultation paper. As the minister indicated in his remarks, the paper proposes a comprehensive reform of all legislation which regulates landlord and tenant relations in Ontario. In order to know where we're headed in terms of legislative reform, it's important to understand where we've come from, so it's useful to look at the history of tenant protection legislation in Ontario. We've provided you with details of this in your packages.

Currently rent increases in Ontario are regulated by the Rent Control Act, which was proclaimed in 1992. This act is administered by the rent control program staff of the ministry. But rent regulation was introduced to Ontario with the Residential Premises Rent Review Act in 1975. Since then, Ontario's system of rent regulation has undergone numerous and substantive changes with the Residential Tenancies Act in 1979, the Residential Rent Regulation Act in 1986 and the Rent Control Act in 1992.

In general, it's fair to say that each act expanded the scope of the legislation and put more regulatory requirements into place. The decision-making process also changed with each act.

The Landlord and Tenant Act is another significant piece of legislation regulating residential tenancies. It provides security of tenure to tenants and it regulates landlord and tenant rights and obligations. This legislation is administered through the court system, and that act took effect in 1970. Since that time it's had a number of amendments.

The Rental Housing Protection Act regulates condominium conversions, demolition and renovation of rental housing. This act was introduced as temporary legislation in 1986 and became permanent in 1989. This legislation requires that municipalities become decision-makers in the area of landlord and tenant relations.

The Residents' Rights Act extended rent control, security of tenure and anti-conversion protection to residents of previously unregulated care homes and became law in 1994.

The Land Lease Statute Law Amendment Act became law in 1994 also after passage of a private member's bill. It provided protection to residents in mobile home parks and land-lease communities, mainly conversion protection.

The sixth core piece of legislation is the Municipal Amendment (Vital Services) Act of 1994, which ensures that vital services such as heat and hot water are provided to tenants.

I'd like to shift gears a little now and provide you with an overview of the government's objectives for reforming modern tenant legislation in Ontario.

The most important objective is to protect tenants from unfair and high rent increases, harassment and unjust evictions, and to provide strong security of tenure. This means, as the minister indicated, that those provisions currently in the legislation which provide these protections will remain, including the guideline, the cap on rent increases, and the existing structure of landlord and tenant rights and responsibilities. Anti-harassment provisions will also be strengthened under the new legislation.

A second objective is to focus protection on tenants rather than on units. As a general principle, the proposed system moves away from regulating the unit, whether it's occupied or vacant, to protecting sitting tenants in their apartments.

Thirdly, it's necessary to create a better climate for investment in existing buildings and construction of new rental housing. Necessary capital works are not being undertaken and ongoing maintenance is not taking place in existing buildings because of landlords' uncertainty about their ability to recover capital costs under the current rent control system. The best protection for tenants is a healthy housing market.

We commissioned a study known as the Lampert report to identify barriers to the development of new rental housing. Many financial and regulatory barriers were identified, but the number one barrier identified in that report was rent control.

The fourth objective: Rental buildings will be properly maintained. The government believes the best way to achieve this objective is to build incentives into the system so that good maintenance makes business sense to landlords and to give municipalities stronger powers to enforce property standards when the buildings are not maintained.

A fifth objective is to provide a faster, more accessible system to resolve disputes between landlords and tenants. Currently, under the Landlord and Tenant Act, the court process for settling disputes is complex and difficult for tenants and small landlords to understand. As well, the complexity of the current rent control system can make it difficult for landlords and tenants to exercise their rights.

Finally, the government wishes to deliver more cost-effective administration with less red tape. Currently it costs \$17.4 million annually to administer the rent control program. The administration of landlord and tenant matters through the courts is also costly. There's considerable duplication of issues among these six acts, especially between the Rent Control Act and the Landlord and Tenant Act. As an example, maintenance provisions are dealt with under both pieces of legislation in slightly different ways. To address these problems, the government wants to create a simpler system with less bureaucracy.

This concludes my part of the presentation. Janet Mason and Scott Harcourt will now provide you with a technical overview of each of the policy areas in which the government is proposing to amend the legislation.

0930

Ms Janet Mason: Good morning. My name is Janet Mason. I will take you through the rent control and maintenance provisions in the consultation paper. I'll start off with rent control.

The overall approach of the government in amending the Rent Control Act is to move away from regulating the rent for units to protecting sitting tenants. In protecting tenants from unfair rent increases, many of the existing provisions will be maintained. The proposed system will allow the market to set the rent in certain circumstances. Finally, it will reduce the complexities found within the current system so that it is simpler and less expensive to administer.

In terms of protecting tenants, there will continue to be an annual rent increase guideline for sitting tenants. It will be calculated in exactly the same manner as the current rent control guideline is. There will be a base of 2% for capital expenditures and an inflationary component for operating cost increases. This year the guideline is 2.8%. As the minister indicated, the guideline for next year will also be 2.8%. Tenants will also continue to be protected with a limit of one rent increase per year and the 90-day written notice provision for a rent increase will be retained.

There will be landlord applications for above-guideline rent increases, as there is in the current system, and these will continue to be limited to two items: capital expenditures and extraordinary operating cost increases.

Like the current system, which provide an overall cap of 3% above the guideline, capital expenditures will continue to be capped. The cap for capital expenditures will be 4% above the guideline. In other words, based on a guideline of 2.8%, the most a landlord will be able to obtain for a capital expenditure will be 4% above this, equalling 6.8%. There will be a two-year carryforward, as in the current act.

The second justification factor for above-guideline rent increases, extraordinary operating costs, will be limited to utilities, municipal taxes and user fees for such things as garbage collection. The amount of the increase allowed for this factor, however, will not be capped. A landlord has little or no control over these costs; therefore, the government feels the costs passed through should not be subject to a cap. Experience has also shown that rent increases due to extraordinary operating have tended to be very low, usually within 1% or 2%.

The proposed system continues to allow tenants to make applications to have their rent reduced. The grounds for rent reduction applications will be inadequate maintenance, reduced or withdrawn services and extraordinary operating costs decreases for municipal taxes. These are the same as under the current system, except that tenants will no longer be able to make rent reduction applications for utility cost decreases. Under the current system, landlords have been reluctant to carry out energy and water conservation projects because they could result in rent reductions.

Finally, tenants will continue to have the right to make applications for illegal rent increases and illegal charges.

I mentioned that the proposed changes to rent control will allow the market to set the rent in certain circumstances. This will apply when a unit is re-rented to a new tenant. Landlords and prospective tenants can agree on the amount of rent charged when a vacant unit is rented. However, once the unit is rented, rent control will apply based on the new rent. This new provision protects sitting

tenants while at the same time allows landlords to charge a market rent when a vacancy occurs.

The market will also be able to set rents in new buildings and newly constructed rental units. It is proposed that a permanent exemption from most provisions of rent control be provided. Tenants in these buildings would be covered by provisions requiring 90-day notice for a rent increase and limits on increases for sitting tenants to once a year, but not by the annual guideline. This provision is similar to the exemption for new accommodation in the Rent Control Act currently, except that this act currently is limited to five years rather than being permanent. The intent of this provision is to encourage new rental construction.

A new provision is being proposed to allow landlords and tenants to agree to a rent increase above the guideline if tenants are willing to pay for certain capital expenditures or new services. For example, they could agree to kitchen renovations or having new carpeting installed. In these circumstances, an above-guideline rent increase application won't be required. The landlord and tenant just need to agree between themselves on the improvement and sign a form indicating this as well as what the rent increase is. The rent increase will be limited by the 4% cap above the guideline. There will be a five-day cooling-off period in which tenants will be able to change their mind. Agreements could be notarized by the government. This provision will encourage landlord and tenant negotiation and would reduce the number of applications to the government.

There are also a number of provisions set out in the consultation paper which are designed to reduce complexity in the system and reduce costs. The rent registry will be eliminated over time. Right now the rent registry records the maximum rent for rental units. The maximum rent is the most a landlord can charge a tenant and is based on past guideline rent increases and any justified above-guideline increases. In many cases the maximum rent is well above the rent the landlord is actually charging. With proper notice under the current act, a landlord can increase a rent up to maximum at any time, even though they may generate a rent increase significantly above the guideline and cap on rent.

It is proposed that maximum rents be frozen at their current levels and that the landlord retain the right to charge maximum rent only until a unit is re-rented for the first time. Eliminating the concept of maximum rent will eliminate the need for a rent registry and reduce the costs of running the rent control system. The registry currently costs \$1.5 million per year.

Costs of the rent control system will also be reduced by discontinuing orders to prevent rent increases, commonly referred to as OPRIs. This provision under the Rent Control Act required the government to freeze rents whenever there was an outstanding municipal or other work order. The government believes that there are more effective ways to encourage proper maintenance emphasizing municipal property standards enforcement. I will speak to this in just a moment.

Finally, administrative complexity in the rent control system will be reduced by eliminating the concept of costs no longer borne for capital expenditures. Costs-no-longer-borne provisions require the tracking of each

capital expenditure for each rental unit so that the amount of the item can be taken out of the rent when its anticipated useful life has expired. This is costly for the government and confusing to both landlords and tenants. Therefore, the government is proposing to discontinue this practice in the proposed legislation.

These are the major highlights of the proposed rent control changes. I'd now like to provide the committee with a brief overview of the changes in maintenance provisions.

As Anne and the minister indicated, Ontario's rental buildings are getting older and maintenance is increasingly becoming a concern. The proposed tenant protection package will address maintenance issues in several ways. I already mentioned that the new legislation will encourage landlords to reinvest in their properties. Allowing above-guideline increases of up to 4% together with the ability to move to market rents when a unit becomes vacant will give landlords the revenues needed for maintenance. The requirement to negotiate the rent level with a new tenant on a vacancy will also be a strong incentive to proper maintenance of the unit.

Reference was made to the proposal to allow tenants to continue to make applications for rent reductions where buildings are not adequately maintained. What I want to elaborate on here is how the tenant protection package will strengthen the ability of municipalities to enforce their property standards bylaws. Non-compliance with a standard, and not just the violation of a work order, will be made an offence. This will improve municipalities' ability to obtain search warrants where there are reasonable grounds to believe substandard conditions exist. Owners could be charged on the spot, possibly, for example, through issuing a ticket, although this would only be one of a number of options available to a municipality.

Property standards officers will no longer have to issue a notice of violation before issuing a work order, although they could still choose to issue formal warnings, and the requirements for serving such orders will be streamlined.

During an inspection, officers could be accompanied by qualified experts who could conduct their own tests and studies. The costs of inspections could be passed on to the owner. Maximum fines will be increased, up to \$50,000 for individuals and \$100,000 for corporations. The court where the conviction is entered will also be able to issue an order prohibiting the continuation or repetition of the offence.

Municipalities will be able to carry out emergency work themselves and collect moneys owed either as property taxes or through a property lien. This will help recover the cost of work done on private property.

The province will continue to enforce its own standard for rental buildings in unorganized territories, municipalities without property standards bylaws and municipalities which provide only partial coverage, for example, where bylaws only apply to exteriors. Where municipalities exist, the province will charge them for the services provided.

I'd now like to turn things over to Scott Harcourt.

Mr Scott Harcourt: Thank you, Janet. Good morning. My name is Scott Harcourt. I'll take you through the

proposed changes to the Landlord and Tenant Act, the delivery system, conversion protection and legislation covering care homes and mobile homes and land-lease communities.

The overall approach to the Landlord and Tenant Act is to continue the current rights and obligations of the parties. A new delivery system is being designed, but for the most part substantive rights are not being changed. The government remains committed to preserving security of tenure and other rights for tenants. No changes will be made to the existing grounds for eviction for most tenancies or to the notice periods related to evictions. Security deposits will continue to be limited to the last month's rent deposit. Seizure of tenants' property for arrears will continue to be prohibited. Landlords will continue to be responsible for keeping premises in a good state of repair and fit for habitation. Tenants' rights to privacy will be preserved.

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Changes that are being made will focus on three areas: First, there will be clarification of existing provisions which have been interpreted by the courts; second, new rules will be established for compatibility with policy changes in other parts of the legislation; finally, the act will be rewritten to make it simpler and easier to understand. The bulk of the legislation was written some 25 years ago and needs to be updated.

What are some changes being proposed by the government?

Subletting and assignment rules will be changed. Because the landlord can reset the market on a vacancy, there will be provisions which will allow the landlord to also reset the rent at market when there is a sublet or assignment and the term of the original tenant's lease has ended. This is to avoid the situation of tenants passing on low-rent units to friends and family members, a phenomenon well known in New York City. These rules will also be changed to allow a landlord greater control on who occupies the unit. If a tenant sublets or assigns without the approval of the landlord, the landlord will be able to evict the unauthorized occupant.

Second, rules for disposal of abandoned property will be clarified. Right now, when it is unclear whether a tenant has left and property is left behind, landlords are uncertain about what the right thing is to do because the act is silent in this regard. New provisions will be added which allow landlords to dispose of abandoned property without liability if they have obtained a writ of possession and have held on to the tenant's property for at least 30 days.

The third major change to the Landlord and Tenant Act strengthens anti-harassment provisions. Current anti-harassment provisions have proven ineffective in many situations. The provisions are ambiguous and require tenants to file applications with the courts. A tenant must also prove the landlord's intention to harass, which is difficult. To give anti-harassment measures more teeth, a new tenant application will be created for relief of harassment and an abatement of rent. An enforcement unit will be created to investigate tenants' complaints and intercede on a tenant's behalf.

Finally, maximum fines for illegal activities will be increased. This will be increased to \$10,000 for an individual and \$50,000 for corporate landlords.

I'm now going to move on to talk briefly about the new delivery system which the government is proposing. The goal is to create a system independent of the courts to handle both rent control and Landlord and Tenant Act matters. Right now, rent control is administered through a branch of the Ministry of Municipal Affairs and Housing, while the Landlord and Tenant Act is administered through provincial courts. Not only is this inefficient, but landlords and tenants find it confusing, as it isn't always clear whether disputes should be brought to the courts or to rent control. A combined system will provide one-stop shopping for both landlords and tenants.

The primary objective of the new delivery system will be to speed up the process. Both landlords and tenants have complained that the current systems are too slow. Many courts in Ontario are backlogged, causing delays in the eviction process and other proceedings. Likewise, rent control decisions take too long, due to procedures in the act being very convoluted.

Of course, creating a single system in itself will not necessarily reduce backlogs and delays. The government is working on procedures that will ensure that all types of applications and disputes are dealt with faster. This includes simplifying decisions and applications and other forms; more emphasis on front-end screening and evaluation, such as encouraging mediation; scheduling hearings sooner; and simplifying decisions by making the rules clear for all parties.

Committee members will note in the consultation paper that the design of the new delivery system is the area in which the fewest proposals have been made by the government. It is the government's intention to consult the public on many issues related to the design of this new system. Many of the decisions will not be made until after the public hearings are undertaken by this committee. For example, what should the relationship of the new delivery system be to the government? Should it be attached to a government ministry, such as rent control is currently, or should it be an independent agency? What should be the appointment process for adjudicators? What should be the rights for a party to appeal decisions? Should there be an internal appeal system or should it be to the courts? Should appeals be allowed based on matters of law only or should they also be allowed based on matters of fact? How can public access be ensured? Should there be full-service offices with fewer locations or should there also be multiple-service offices with more locations? Finally, how should application fees be applied?

The government is proposing to repeal the Rental Housing Protection Act. This is the legislation which currently provides a process and controls conversions, demolitions and major renovations. It is administered by municipalities and is subject to provincial approval criteria. The government believes that the Rental Housing Protection Act has become a major barrier for many landlords who want to improve the quality of their buildings or make better use of the land that their building is on.

In some cases, as stated by the minister, owners have boarded up their buildings because the legislation will not allow them to redevelop their sites. It is proposed that the municipal review process be eliminated. Landlords would be allowed to make changes subject to building, official plan and other municipal approvals.

However, to ensure tenants are protected, it would be required that landlords provide extended tenure and other compensation to tenants. For condominiums and cooperative conversions this extended tenure could be a few years or perhaps even a lifetime. The government has not made a decision in this regard. For other changes, financial compensation of some form may be more appropriate.

Changes are also proposed in the rules that apply to care homes. Care homes include retirement residences, rest homes, facilities which provide rehabilitation and therapy and boarding houses which provide care. They do not, however, include nursing homes, which are regulated under the Nursing Homes Act.

Up until 1994, care homes were not regulated under provincial tenancy laws. At that time the previous government extended rent control, the Landlord and Tenant Act and the Rental Housing Protection Act to care homes. It is proposed that residential tenancy laws continue to protect residents of care homes. However, the provision of care is essential in these facilities, and special rules are required to recognize the differences between care homes and other rental accommodation.

In terms of coverage, it is proposed that the definition of "care homes" remain the same, with one exception: The legislation will clarify that temporary rehabilitation therapy facilities are exempt. These facilities, which include alcohol and drug rehabilitation centres and women's shelters, have experienced significant problems trying to function under the legislation, so it is proposed that these facilities be exempted.

For other care homes, Landlord and Tenant Act provisions will continue to apply, but a number of special rules are proposed. One of these rules will be to allow landlord access to a tenant's room for purposes of providing bed checks and care where this is agreed to by the landlord and the tenant. The current law does not allow for this. The change will allow tenants the level of care which they require and expect.

A second rule will allow for in-house and outside transfers of residents to alternative facilities due to changing care needs. This is also disallowed under the current law if the resident doesn't agree to this. The need to allow transfers must be balanced, however, with appropriate provisions to ensure that residents are only moved when necessary, that there is due process for residents and that they are assured of getting the right kind of accommodation. How this transfer process should work has not been decided by the government as yet. It will be finalized after the public consultations.

Another new rule will amend notice requirements for care home residents where they are required to terminate their leases in non-voluntary situations such as the death or transfer of a resident. Right now the law requires 60 days' notice. It is proposed that this be reduced to 30 days in these circumstances.

Finally, it is proposed that there be a fast-tracking of eviction cases where a resident poses a threat to other residents. This will be done administratively by dealing with cases on a priority basis. Due process will be preserved. It will not involve changing notice periods for termination or through shorter hearings. It is felt that fast-tracking of such cases is necessary because of the vulnerable population in care homes and often congregate or shared living situations.

Rent control protection is also proposed for care home residents. As with the current legislation, rent control will apply to accommodation but not care services or meals. Conversion protection will apply to care home residents. As with other accommodation, protection will focus on sitting tenants through extended tenure and compensation. However, an additional requirement for the landlord to find alternative and comparable accommodation will be stipulated for care homes.

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The last subject area I'm going to talk about today is mobile home parks and land-lease communities. As with care homes, the government is proposing to continue to cover these facilities under existing tenancy laws. Rent control, Landlord and Tenant Act protection and conversion protection will continue to apply. However, because of the distinct operating characteristics of these facilities, special rules are required. One of these special rules will be a higher cost pass-through cap for capital expenditures related to infrastructure upgrades required by a public agency.

Many of these facilities are required to substantially upgrade their water supply and sewage disposal systems. The very high cost of these upgrades, sometimes in the range of hundreds of thousands of dollars, combined with the low base rent, often \$100 or \$200 per lot, means that the proposed 4% cap that Janet spoke of, which is applicable to other accommodation, simply doesn't work for mobile homes and land-lease communities. The government is therefore proposing that a higher cap apply in these circumstances. However, the actual level of the cap will not be decided until after the public consultations.

The last rule being changed that I want to mention deals with the placement of For Sale signs. Right now, these signs are often placed in the property surrounding the homes. This gives the false impression that both the property and the home are for sale. The new rule will restrict the placement of For Sale signs to the window of a home.

This concludes the ministry presentation on the proposed tenant protection legislation.

The Chair: Minister, is that the end of your presentation?

Hon Mr Leach: If I could just wrap up in a couple of minutes. What the government has proposed to do, and is doing, is putting a consultation paper on the street for all of the major stakeholders to have input into the system. The paper is not perfect. There is room for improvements. We're looking for input from everybody, and I think the most important role that this committee will have is to provide positive input into the development of a package that is going to be fair for tenants and fair for landlords.

What we have to do is create a system that has fairness and equity for everyone. We have an opportunity now, as the three parties forming government, to work in a positive manner to make sure that tenants are protected to the utmost, which is our priority, and also to create a system that will create the building of new rental stock, because without new rental stock, there will never be any choice for tenants. The landlords right at the present time, I think, are in an upper-hand position where, because of the total lack of supply, they don't particularly have to be concerned about the wellbeing of tenants, because there are a lot more tenants than there are apartments.

The best protection that tenants can have is an abundant supply of new buildings. I think you can see that in a couple of communities in Ontario — in Ottawa, for example, as a result of other actions, where there is a substantially high vacancy rate — that landlords are competing for tenants, they're providing free rents, they're providing incentives such as microwaves and televisions and so forth to attract tenants. I think that's a good indication that the marketplace will truly determine what rent should be if there is a good supply. Under the current laws and regulations that we have in Ontario, there is no way that anyone is going to invest in the building of new rental accommodation. We have to develop the ways and means to do that, and at the same time, we have to ensure that the tenants' rights are paramount and protected.

The Chair: We now have one half-hour per party for questions or comments, starting with the official opposition. We have Mr Curling and Mr Kennedy. I'm not sure who's going to lead off.

Mr Alvin Curling (Scarborough North): I will do so, Mr Chairman. I want to start by recognizing the ministry staff, who have been around this — déjà vu for them — for maybe the third time, meaning that there are three different parties you have dealt with. I would in the process advise the minister that he could listen to those bureaucrats because they're hardworking and dedicated people and they have known the results of listening to the people outside, and consultation is extremely important. Sometimes it's hard to get it through to the minister's head. I'm not talking about a specific minister but ministers in general.

Yes, I'll be sharing my time with my colleague.

I want to say how pleased I am to respond on behalf of my party, the Liberal Party, and also on behalf of the many tenants across this province. I have noticed that the minister himself has survived the cabinet shuffle and retained his portfolio. This is the Minister of Housing who said that we should not be in the housing business. Maybe there is no one in the Tory caucus, I presume, who is able to protect the rights of tenants, who is able to bring about the environment for decent and affordable housing for all the people of Ontario. Hence, here we are back with Mr Leach, and I hope this time around, Mr Leach, there is lots to learn and a lot to do.

I'm here today to state as clearly and as forcefully and unequivocally as I can that we are opposed to this new-direction proposal. It's a proposal that will kill rent control and lead to higher rents across the province.

I listened very carefully as the minister described his proposal in such glowing terms and I wondered if he and

I and the three million concerned and angry tenants across the province have been studying the same paper. Then I remembered that this is the same minister who when his government rammed through Bill 26 gave his assurance that it would not allow municipalities to bring in gas taxes. When our party and the NDP and many others said that it would, he said he would resign if it could be proven. So we got opinions from constitutional experts who said that, yes, indeed, Bill 26 would allow municipalities to bring in gas taxes. But the minister refused to keep his word. He refused to do the honourable thing and resign. In the end it was the minister who had to eat his own words and bring in his own amendments to change his own supposedly perfect legislation to keep it from allowing municipal gas taxes.

So you will understand when I say that when it comes to this minister describing his proposal or giving his reassurances or promises, Ontarians have learned to take his word along with a few large bags of salt.

I'm sure that the minister's spin doctors and the Premier's spin doctors have been lying awake for many nights trying to figure out how to put a smokescreen around the more repugnant aspects of this proposal, but when you clear away the smoke, three inescapable facts remain:

(1) This proposal kills rent control. It doesn't modify it. It doesn't reform it. It doesn't improve it. It doesn't do any of the things that Mike Harris and Al Leach promised tenants in the election. It just kills rent control. It doesn't do it all at once. It does it more insidiously, one apartment at a time, building by building, in community after community across the province. This proposal kills rent control. That is its intent and that is its effect.

(2) Instead of encouraging landlords and tenants to work together, this proposal rewards bad landlords because the more often tenants move the more often landlords can raise rents and raise them as high as they want.

(3) This proposal will cause rents to skyrocket, especially in areas where there are low vacancy rates such as Toronto, where the vacancy rate is 0.8%, in Windsor, where the vacancy rate is 1.8%, and in Hamilton, where the vacancy rate is just about 2%.

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I could go on about the many flaws in this proposal, about how even tenants who do not move from their apartments will face annual rent increases of up to 7%, as the staff just told you a while ago, with the 2.8% and the 4% that they throw in, this at a time when inflation is barely over 1% and many workers are looking at wage reductions, not wage increases. I could go on about how this proposal will give landlords complete freedom to convert apartments into condominiums and to demolish existing apartments or about how even developers say that this proposal will not cause new apartments to be built. But I'm sure there will be plenty of time to discuss all of these matters during the course of our hearings. Instead I want to elaborate on the three key points I raised earlier.

As I mentioned a few moments ago, this proposal kills rent control. That is its intent and that is its effect.

Let's suppose, Mr Chairman, that a couple with a modest income lives in a one-bedroom apartment renting

for \$800 a month. They work hard and they save, hoping that one day they'll be able to afford that two-bedroom apartment down the hall that right now is occupied and renting for \$1,000. Well, that magic day comes along and the two-bedroom apartment becomes vacant. So the couple go down to the landlord and say, "We'd like to rent the two-bedroom apartment." The landlord says, "That's great, but the two-bedroom apartment now goes for \$1,200 a month." Under the Tory proposal, he can now do that.

They call the landlord but the landlord says, as you know, they can't afford that. They hear about another apartment in another building, so they call the next landlord. He says: "Yes, we have a two-bedroom that was renting for \$1,000, but the tenant moved out and we're now charging \$1,200. That's the going rate." This process is repeated across the province. Tenants move out; rents go up. Those who can't afford to pay more are virtually prisoners in their own apartments because their rent is guaranteed only as long as they stay in their own apartments. Any other apartment that might become available would suddenly experience a sharp rent hike.

We live in a province where approximately 25% of tenants move from their apartments each year. At that rate, you don't need a calculator to figure out how long it will take before the protective lid of rent control comes off — virtually all of the apartments in this province, as you know, in a very short time. But then that is the intent of this proposal and that is its effect.

But there comes a time, and that time is now, when someone has to look the minister in the eye and say: "Minister, you have broken your promise to tenants. You haven't kept your word. This isn't what you told tenants you would do." Of course, this minister's and the Premier's words on rent control have changed course so many times that it could give you a whiplash. Indeed, they seem to have two different positions on rent control, one when they're looking for votes and another when they already have them.

In April 1995, when Mike Harris was courting the votes of tenants, he said, "We want to bring in a rent control program that will truly protect tenants and give them lower rents."

In October, when he was no longer looking for tenants' votes, Al Leach, the minister here, told the Ontario Home Builders' Association, "I've said it before and I'll say it again: Rent control has got to go."

A few months later a by-election came along in York South, and lo and behold, the minister was a born-again supporter of rent control. The Tory brochures cried out: "Rent control will continue. Tenant protection will be improved under the Mike Harris government." But this time, no one believed them. Ontario's three million tenants know that you cannot believe or trust any promise or commitment on rent control made by Mike Harris and Al Leach. If you could trust them, there would be one more Tory in the Legislature today. Instead, our own caucus has been bolstered by the presence of my colleague here, Gerard Kennedy. Gerard is here because the tenants of York South knew they could believe him when he said that Ontario Liberals would fight as hard as they could to protect rent control and to protect tenants.

The second point that I made earlier, and I want to return to it again, is that this proposal rewards bad landlords. There are in this province many, many good landlords. I've met them, spoken to them, watched them operate. They take pride in their buildings. They fix things when they are broken and do preventive maintenance so that things will not break. They make improvements in their buildings, including putting in better security systems. They are sensitive to their tenants' needs and they protect the majority of good tenants from a small number who may be too noisy or in some other ways violate the social environment of the building.

Now along comes Al Leach's new proposal. What does it say to those good landlords? It says, "You have been doing it all wrong. By being a good landlord and keeping your buildings clean and quiet, safe and in good repair, you have encouraged your tenants to stay in your building, and as long as they stay, their rent will be regulated. You ought to be a bad landlord," you have said. "Let the garbage pile up; let the pipes break down. When you have to make repairs, do it as loudly as possible and at the most inconvenient time for your tenants. Intimidate and harass your tenants at every opportunity. That way the tenants will start moving out, and each time an apartment becomes vacant, you can jack up the rent." That's the message this proposal sends to landlords.

I know the minister will say: "Hold on. They can't do that. I'm going to create an anti-harassment unit and increase fines for harassment." Don't provoke me, Mr Minister. We know about human rights. We know about all of those areas that people are lined up and can't even get their day in court. This government is disloyal to the process. This government is trying to pit tenants against landlords. The real enemy is not the landlord. The real enemy is not the tenant. The real enemy is this government.

Get serious, Mr Minister. Does anyone believe this government when it says it is going to be tough in enforcing tenants' rights? When a government that is striking down one environmental regulation after another and one enforcement unit after another says it is going to get tough on enforcement, can anyone believe it? When a government cuts back on funding for crown prosecutors and police forces, the very people who enforce our laws, and they say they'll be tough in enforcement, can anyone believe it? Even if the government set up such a unit, how long would it be before it was cut back so that the government could have more money, which it desperately needs, craves, to pay for a tax bonanza for the wealthiest Ontarians? How long would it be before the unit is simply eliminated because this government has so much faith that all industries can be self-regulated? Get real, Mr Minister. No one believes that your government will enforce anti-harassment procedures.

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This is the very government that cancelled affordable housing, about 380 projects, and told us that the private sector will build. They have told me, and I understand they have told you, that your plan will not stimulate any construction of affordable housing. The concern of affordable housing even goes beyond the gutting of rent control and the cancellation of the construction of

affordable housing by this government. It extends to the maintenance and proper management of these non-profit projects which I'm visiting.

I've written to the minister about some concerns I have, especially one tenement project up in Mississauga — terrible, poor management. I would urge the minister to take a very serious look at this. Of course I've written to the minister on this and I don't think he's had time yet to respond to some very serious allegations that are there now.

I return one last time to my third point, that this proposal will cause rents to skyrocket. You don't need to be a genius to figure that one out. Every time an apartment becomes vacant, a landlord can increase the rent by as much as he or she wants: \$100, \$200, \$300, \$400 or even \$500 a month; the sky's the limit. The minister will say: "No, no, that can't happen. Market forces will keep prices low." Market forces can do wonderful things. Under the right conditions they can create jobs and offer a lot of opportunity, but unfettered, unchecked and unregulated market forces can do a lot of damage, a lot of things to people.

I might find the minister's approach more persuasive if the two guiding features of the marketplace were fairness and affordability, but they aren't. One of the simplest rules of the market is that where there is a shortage of supply and a strong demand, prices go up. That isn't ideology; it's a fact of life. Everyone from Karl Marx to Milton Friedman understands that. If you don't understand that, Mr Minister, go to any sold-out play or sporting event and ask the scalpers what they're charging for tickets. Rent control is more than just a sporting event. We're talking about people's homes, the places where they live and raise their families.

If you go to a Toronto Raptors game and the top-price tickets are sold out and you can't afford them, you can try to get cheaper seats. If all the seats are sold and you can't afford any of them, you can go to a bar where the game is being watched. If you can't afford that, you can always turn on your TV set. But where do families go when they've been squeezed out of the rental market? Where do they go when they can't afford the apartments that are available and the apartments they can afford are no longer available? Into the streets? Into basements? Into hostels? Where do they go?

If market forces unfettered, uncontrolled and unregulated ensured that there was a good supply of affordable apartments, rent control never would have been brought in in the first place. But this minister has a short memory. He forgets that back in 1974, when there were no rent controls of any kind, vacancy rates in Ontario stood at about 1% and rents were skyrocketing. Then Bill Davis, who was headed for defeat in the election, promised to bring in rent control and was elected. Luckily for the people of Ontario, Bill Davis had something this government and this minister do not have: integrity and respect for good policy. Bill Davis didn't just campaign on rent control; he kept his word and brought it in. That's what separates this government from every other government, including the previous Tory government: It doesn't govern according to good policy; it governs according to ideology. It doesn't listen to people. It doesn't do the cor-

rect thing. It's too blinded by ideology. It clings rigidly to an absolute belief in the supremacy and perfection of market forces.

This brings me to my final point. You have to ask yourself, where did this proposal come from? Is it something just conjured up one night by Tom Long or maybe by Leslie Noble? Did it come out of a process of listening to tenants and their concerns? Is it the result of a sound process of policy review and development? The answer is, none of the above. This proposal is pure ideology. It's pure dogma. This is the product of a government that sees its role as afflicting the already afflicted in order to provide comfort to the already comfortable. That's how this government operates. It's so addicted to its own blind ideology that it can't see the side-effects that are killing the quality of life in this province. This government doesn't operate on reason; it operates on faith. It's all belief and no rational thought — "Trust me." I'm not quite sure that tenants of this province are prepared to trust this government or this minister.

This government believes that by giving a tax bonanza to the wealthiest Ontarians, the money will somehow magically trickle down, creating wealth and jobs for everyone else. Never mind that it didn't work in Reagan's America. Never mind that it didn't work in Thatcher's England. Never mind the fact that the ideologues, this government, have true believers and faith. This proposal that we will be examining over the coming weeks is just another of their articles of faith. This blind faith brought forward a tenant rejection package so dreadful that the Tory spin doctors have been falling all over themselves trying to dress it up.

You can take a skunk and dress it up in lacy clothes, spray it with perfume, stick sunglasses on it and say, "Look at my nice French poodle," but a skunk is a skunk and bad policy is bad policy. That's exactly what this proposal is: bad policy. For all the lacy dresses and perfumes and sunglasses, it's still a skunk. Ontarians can still recognize a skunk when they see one. That's why tenants across this province are mobilizing in unprecedented numbers to oppose your policy and that's why I and colleagues are working closely with them and lending our voices to the cause.

I will close by reiterating the three points I made at the beginning of the statement: (1) This proposal kills rent control; (2) this proposal rewards bad landlords; and (3) this proposal will cause rents to skyrocket.

This proposal is bad for tenants and bad for Ontario. That is why I and my colleagues in the Liberal Party will fight against it. We'll fight to save rent control and assure affordable apartments for tenants in Ontario.

The Chair: Thank you. Mr Curling has left you five minutes, Mr Kennedy.

Mr Gerard Kennedy (York South): Minister, I would have preferred, under the best of circumstances, to ask you questions, but there's much in your presentation that begs explication. The people out there need to know where your government is coming from.

The dynamics that this paper omits completely, that it doesn't talk about are very simple. Rents in Metropolitan Toronto are 40% higher now than they are in other major

centres across the country. That's a fact, and you omit it completely. When we look at the dynamics of the marketplace and we see that the return for landlords has been 10%, according to the Russell Canadian Property Index, higher than retail, industrial, office and mixed-use projects, that apartments have brought a reasonable return over the past 10 years, we wonder why the government in its role as referee — it's unfortunate when the government has to have that role in terms of the marketplace — when it looks at its role as referee, when it finds itself coming down so heavily on the side of one and not the other.

What people have to realize is that this hearing and this paper is couched in some of the worst doublespeak that we've seen from this government. There is no manner in which — I asked the minister earlier in the House and so I have his answer — this protects tenants. There is not one single measure in here that enhances the protection for tenants. There's nothing at all.

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Instead what we have is a rejection of tenants' basic security and, Minister, there is an insecurity out there that this government has helped to contribute towards that this only compounds. In the ministry presentation, they spoke of 40% of rents being subsidized. A very large proportion of those are not subsidized at all, but instead are paid for with people's welfare money, and that welfare money was reduced by 22%. What we're getting to pay for those rents is the food money that people used to purchase their food with, and it has fuelled a 54% increase in people using food banks.

The dynamic which this minister has chosen to address is to change the way that tenants can look at their protection, and not only through rent control, or the decontrol, because the sophistry, the pretension that somehow you're protecting the tenant instead of the apartment, has got to be the worst case of doublespeak we've heard. The tenant gets protection except for when they need it the most, when they're out there vulnerable after losing a job, after a family breakup, after any natural circumstance, trying to find an apartment. What they're going to be paying is prevailing market rent, which you know and I know and everybody in this room knows will be higher than the rent that many of those people are paying now.

You say in your paper that you will restrict increases to one time a year. Mr Minister, I put to you that that's not true. Instead, every time an apartment changes over there will be a rent increase. That's the kind of market we have with 0.8% vacancy. When we say to people out there that somehow they're protected if they're in their apartment, we also know that isn't the case. In fact, people are facing, as my colleague has indicated, far above inflation increases already. You're adding another 1% and then you're allowing to pass through, uncontrolled, any other expenses that supposedly the landlord can't control. What about the expenses the tenant can't control? There's no reciprocity here.

Minister, when you talk about being able to protect tenants, when you talk about the need for maintenance, there is no provision here for municipalities to have extra resources to follow through. You can charge \$250-million

finances, and if there is no enforcement, there is no protection for tenants. People know now how hard it is to have their heat attended to, to have the kinds of things that are already in place followed through, so there is no way that tenants will receive additional protection under what's happening.

The aspect of the paper that has to bear mention is the Rental Housing Protection Act being removed. Basically, what you're permitting is for people to be moved out of their apartments by landlords who choose to either demolish them because they have higher carrying costs or simply convert them to condominiums or other developments.

I remind you that there were 2,000 conversions before 1985 in Toronto and only 20 since under the changes, the Rental Housing Protection Act. Taking away that protection means every single tenant in Ontario is threatened potentially in terms of what's there. To have that happen at the very same time, when you're not addressing what we would like to be talking about today, which is a whole package about affordable housing, how indeed do we cause more affordable housing to be created in this province? By choosing, Minister, and your government choosing to start with rent control, to destabilize the relationship between tenants and landlords, you've clearly shown where this government's concern is.

This government's concern is not for a healthy marketplace, not for good dynamics between landlords and tenants, but instead for some short-term gain for some landlords. I can tell you, it's only some landlords who think these measures will bring them higher returns, because instead of moving and addressing what are structural problems, which your government in an earlier form chose to address through forms of rent control, what we have here is a lopsided provision that will only take on the concerns of landlords. Time after time as we read through these measures, it is landlords who receive the flexibility, landlords who receive the higher return and landlords who are given the extra measure from this ministry.

The minister spoke about costs. The minister said this would be cheaper. What landlords have been asking for, what this moves them towards, is a BC system of rent protection. That system costs more than the one in Ontario.

There is very little in this that lends itself to the constructive discussion that this committee should be putting forward. We will spend much of our time trying to get your ministry to put forward what exactly it believes will be accomplished in terms of these measures. There is no baseline here. The elimination of the rent registry means that we will no longer be able to know exactly what's happening in the marketplace. By choosing to move on these ahead of the time, prior to any other measures in terms of affordable housing — Minister, there is one question I would like to ask you.

The Chair: Thank you very much, Mr Kennedy. Your half-hour has expired. Mr Marchese.

Mr Rosario Marchese (Fort York): First of all, I'm very happy to see my Liberal colleagues become unflagging boosters of rent control. It's good to have that support.

Secondly, I want to say that there is never a good time for tenants to be hit with a rent increase, but this is the worst of times. I want to give the context that will say to the people watching why this is the worst of times to be able to do it.

Unemployment is now at a record 10% level. It used to be at 3% and we used to find that acceptable. It used to be at 7% and we then said that was acceptable. It's now nearing 10%, meaning one million, 0.2% of the population, are unemployed. That's a whole lot of people unemployed. It means they're not able to feed their families as they would like to. It means they won't have the standard of living in this country that they should.

There are further complications to this. Wages are down. We're seeing an increasing wage gap between the rich and the poor. This is the worst of times to introduce this, given that the wages the majority of people are making are going down.

Firings of people who work for governments are happening at a record rate and you people are happy about that. The federal Liberal government is firing 40,000 people and you're sending away 14,000. My suspicion is will be up to 25,000 by the end of your term, and all of you are gleeful about doing that. I say it's the worst of times to do that because those people are not entering a marketplace where the private sector is picking them up. They're firing them too. They're just as happy to become lean and mean as you are. So governments, Conservative ones, and the private sector are very happy to be throwing people on the streets. Who takes care of them? This wonderful marketplace that you're so proud of. The marketplace will fix things. Well, the marketplace will not fix it for the unemployed.

You have high unemployment, wages are down. You, the federal government and the private sector are firing people. You promised you would be creating 725,000 jobs. They're not coming. We knew they wouldn't be coming and they won't come, further compounding the unemployment problem of Ontario.

Welfare assistance has been cut by 21%, further endangering vulnerable people. Injured workers' benefits will be further reduced when you introduce legislation that will do that. Vulnerable injured workers will be getting less as a result of a measure you will introduce.

Seniors are beginning to pay user fees. You say: "Oh, it's a small, little fee. It's not so bad. Seniors can afford that." I tell you, seniors cannot afford user fees on prescriptions every time they go to get a prescription filled.

Now you're introducing a measure that will increase the rents of tenants. In this climate, do you, Mr Minister and civil servants, think that's a good thing? I tell you no. This is the worst of times. When the tenants who move end up having to pay more rent, it will hurt them individually, but it will hurt business as well because they will have less disposable income to spend.

Consumer confidence will be further eroded. The economy depends on consumers, 60% of it depends on consumer spending, and you've helped to squash that. You've contributed to further weakening the economy because there's no confidence out there. Nobody knows whether they're going to lose their job; as a result, they

don't spend. When you hit them with those increases, they will have less money to spend.

This economy is going to be further damaged by the likes of this government and it will be very difficult to repair. You can talk about all the faith you have, about protecting the future of the children, but you're not protecting their future. You're making us all vulnerable, but our children in particular.

What did we do as a government? You said there was a shortage of supply of housing. We were building. We were building at a time when the private sector was not. We have known that the private sector has not wanted to build. Why? Because it's not making money. So we were building and we built interesting housing from our point of view. From yours, obviously you want to get out of the housing business. We built cooperative housing. In my view, it's one of the best forms of community living you can have out there. Some of you in those old days built terrible complexes and herded all the poor people into one area. It was the worst planning and the worst housing construction one could build. I don't know how anybody could have been happy with that. Cooperatives are good community living. Why?

1030

Hon Mr Leach: I agree with that.

Mr Marchese: You agree with that?

It brings a range of people with different incomes into one housing co-op, it brings a mix of different people and it brings and accommodates the various disabilities that people might have, such as HIV, in one building. That's a community. Your proposal will not do that; this proposal will not do that. You're going to be doing it on the back of the taxpayer, this famous taxpayer of yours. Those poor citizens who may not be paying, I don't know what happens to them, but there are a whole lot of citizens who are not taxpayers, like little children, who are going to be suffering the effects of your proposals.

We built housing at a time when you didn't want to, when the private sector wasn't. You have a high hope that it will. I have to say to you that what they want is the follow-up, and the report by Lampert tells it. They want to reduce development charges. They want to equalize property taxes. They want to have the GST payable. They want to streamline regulations on building; you know what that means. They want to have the CMHC mortgage insurance fee. They want to lower administration due to reform of rent regulations etc and eliminate the provincial capital tax. That's big, heavy support you would be providing to the private sector, the same kind of support you don't want to provide to build our own housing which we would control. You want to give it away literally by doing all this. I suspect eventually you will have to do this, because otherwise they won't build.

They've told you that rent control is not enough, and you've pointed to that. You are gradually moving to what they want for them to build. We as a government are doing that without having to do any of these things. You thought that was expensive. This won't be expensive? It will. You're moving in that direction to subsidize your friends. But that's okay, because if you subsidize your rich taxpayer, that's not a problem, is it? That's what you'd be doing with your proposal.

You call this the tenant protection package. Very clever, but they won't be fooled. Tenants are not fooled. You say, "Our priority is to protect the tenants." I don't understand that. Tenants won't understand that either. They don't understand how this package protects them. This package says, "When you move, you're going to be hit with an increase." We don't know what that is, but I suspect it will be as high as they can get it. Does that protect tenants? I don't understand that. Perhaps you do, perhaps the civil servants do, but I do not.

The tenants understand that, because when they get an increase they say, "My God, this is an extra \$100" — or \$200, whatever it is — "that I'm going to have to take out of my pocket." A third of the tenants are already paying 30% of their income. This will compound it. How does that protect tenants? How do you have the nerve, the gall, to call this the tenant protection package? This is a package that protects your friends, who are not happy because you haven't gone far enough. Your friends the landlords are saying, "You haven't gone far enough; we need more."

The discussion paper is about increasing rents. The minister thinks rents are not high enough, so we're going to find a method to make sure they go up. One of my colleagues here mentioned that landlords are making enough money as it is. This is according to the Russell Canadian Property Index, described by the *Globe and Mail*, a good paper of yours, as "a highly respected gauge of investment activity." Ontario's apartments have delivered a 10% annual return on investment over the past 10 years, outpacing all other sectors, including retail at 9%, industrial at 8.4%, offices at 5.2% and mixed-use projects like the Eaton Centre at 3.4%. Don't you think they're doing okay? I think they are.

Hon Mr Leach: You didn't hear the answer yet.

Mr Marchese: I'll be looking forward to the answer as we get along. I think they're doing fine. The profits are high enough for them to reinvest the money they're making into those buildings that they've allowed to become dilapidated. My feeling is that if they're making much more than so many other sectors of society, they should put money back. We shouldn't help the landlord any more; we should be helping the tenant. My view is that the government just wants to roll up a truck to the landlords' office and shovel off the cash. The trouble with that is that it's the tenants' cash they're giving away. So while the minister is filling the landlords' pockets, they won't be building any new affordable housing. This report tells us that. There is no evidence that simply eliminating rent control will build more affordable housing; there's no evidence whatsoever.

Hon Mr Leach: I said that.

Mr Marchese: I'm confirming what you said. If that is the case, why are we doing it? It's a first step; I understand.

Rent control by itself will not do it; there will have to be other subsidies, other support to give to the landlords to make it happen, which this Conservative government will be happy to do in step-by-step ways because it's too afraid to introduce a measure or measures that will do this all at once. They're afraid. That's why they've introduced a package. It's not a bill, it's a package,

because they want to see whether or not tenants are going to have a revolution on this revolutionary Common Sense stuff or whether they're going to passively sit back and say: "It's not so bad. I can be hurt some more."

Tenants did not ask for this. Every tenant I have spoken to in every group I've been at has said, "We didn't ask for this." The minister comes to this committee and every comment he has made, wherever he has been, he says tenants have asked for change. They have not. If anything, they would have wanted to strengthen rent control, not weaken it. If you introduce a measure to weaken that they didn't want, why would you say tenants have been asking for change? They haven't. Why would tenants say, "Please, Minister Leach, give me an increase; I really enjoy them"? Why would they do that? It makes no sound economic, psychological sense that they would hurt themselves that way. You've been responding to the landlords as a first measure; that's what you've been doing. I know you're moving in that direction.

I think it's incumbent on the government to say what else it's going to do to make sure the private sector is going to build. Because when they hear the kinds of things you will want to do and help them with, they'll say: "Please, Mr Minister and Conservative government, build it yourself. It'll be cheaper in the end." Don't give them those kinds of subsidies that they're looking for to build; do it yourself.

We know that over 70% of the tenants will move in five years, from this report itself. What that means is that the majority of people will have moved by the end of the five years. What it means is that the majority of people, 70% or so — let's say we're wrong by 5% or 10%; let's say 60% — will be hit with an increase, which in effect means you will have eliminated rent control. On the other hand, you say, "Oh no, we've kept the protections." How are the protections there kept if 60% or 70% of the people move out in five years and will be hit with an increase? I'm told some figure that we don't know yet, but they will all be hit with an increase once they move, every time they move. How does that protect them? How does that protect that sitting tenant? That sitting tenant will become a sitting duck. They won't be able to go anywhere.

If there's harassment there, they won't be able to deal with it. Do you think some frail senior is going to get up and say: "I'm going to go to this anti-harassment unit. I've been told this will solve it for me." Do you think that's going to happen? It's not going to happen. People who are in abusive situations at home will be afraid to leave their situation. They're afraid now, but when they know they're going to be hit by an increase, do you think it's going to be easier for them to say, "I'm going to move because I'm going to be facing a \$100 or \$200 increase"? They're not. They're sitting ducks. They'll be more vulnerable than ever before. It isn't a good thing; it's a terrible thing.

You're leaving everyone unprotected: those who move with an increase and those who stay with the insecurities of staying, whether it's an abusive relationship, whether it's someone who's harassing them in the building, whether they want to leave a situation where there is a great deal of violence in that community and they say:

"I've had enough. I want to leave." But they won't leave. How can they leave and go to another place where they're going to be facing an increase? Maybe you have answers for that. I'm waiting to hear them. I'm waiting to discuss that over the next three weeks, and the next couple of months when you will be introducing another bill. And I'm looking forward to the tenants and/or the builders, to hear their views on this matter, in the same way that you are.

1040

You will be eliminating the Rental Housing Protection Act, which will mean that many of the rental units that are now used for people who are of modest means will have less accommodation than before. This measure will not mean we're going to have more affordable rental units out there in the market. In my view, those rental units that would be affordable are likely not to be there. Who knows what will happen with those units? So this measure further compounds the problem of accessibility. You've eliminated everything we have begun in terms of non-profit and cooperative. That's gone.

The private sector is not ready to build, because you haven't given them enough. You're getting rid of the Rental Housing Protection Act, which will get rid of low-rental units, and you say you're interested in building more housing. How is it all going to happen? In the next five years in Toronto in particular we're going to see a housing shortage. But what I'm worried about is the public interest, and what's the public interest for me? It's not the millionaire. The millionaire will always find housing. The public interest for me is the poor person, the poor working person, the poor middle-class person, where the middle-class person is becoming poorer and poorer. That's what I'm worried about. How will they make ends meet: unemployed, working longer and longer on part time, fear of being fired or laid off soon by this government and other governments, federal and municipal, because the less money you give them, the less they will have? That's what I'm worried about.

But, you see, don't worry. For those who are likely to be harassed — and in acknowledging that, by the way, in acknowledging that you have an anti-harassment unit and all that, you're acknowledging that harassment will happen.

Hon Mr Leach: Same with your government.

Mr Marchese: By introducing this measure here, you're acknowledging that harassment will happen by a landlord who is likely to want, who has an incentive, to throw people out so he can increase the rent. So you're saying: "Don't worry, we'll increase the fines. We're going to increase the fines. That will scare the geewees out of those landlords who will somehow intimidate or harass people, and that should do it. With that great, big fine of up to \$100,000 nobody will harass those poor tenants."

That's not going to happen. Harassment will continue to happen. Harassment will continue to happen and it has always existed, not just in housing, but just general harassment, just general discrimination of different kinds. I'm reminded of your measure of getting rid of the Anti-Racism Secretariat because you said everybody was equal: "We don't need it because everybody's equal. It's

such a foolish thing." It's so discriminatory to have employment equity, you said, because it discriminates. So we're going to get rid of all that and then we're going to get rid of the Anti-Racism Secretariat because everybody's equal and we have the Human Rights Commission there anyway and that takes care of discrimination. Such weak philosophical positions that you present.

So here you say: "Now we're going to create this anti-harassment unit. Fines are going to be very, very high, and everybody will be happy." They won't; it will continue. Because vulnerable people will not know how to access these things. Vulnerable people don't have access. You can say there's going to be a big fine, but if the little person is afraid down there in some little building, they're not going to know how to get there. They're not going to know how to access the system.

Hon Mr Leach: Why did you establish it?

Mr Marchese: Because we felt our rent control wasn't bad. Our rent control was good protection for tenants.

Mr David Tilson (Dufferin-Peel): An absolute disgrace.

Mr Marchese: So, now, from the point of view of the Tories, rent control is a disgrace, says M. Tilson. Sure it's a disgrace for M. Tilson because his friends are unhappy, because this is an us-and-them situation. This is the rich landlord, M. Tilson, who is the rep of the fellows, and us, those of us who are here to protect the larger public interest. The disgrace that's he's talking about is the disgrace and the damage we cause the little people that you don't give a damn about really. Because when they're going to face this increase, you don't give one little damn about those people.

Mr Tilson: You destroyed housing in this province.

Mr Marchese: You're destroying housing. You've destroyed every housing project that would have built affordable housing and you're going to eliminate that, causing a shortage in the future, and you're going to eventually provide to your landlord friends, your rich friends, what they need to build. That's what you want, that's what they want, and you're going to get there eventually.

But I really have hope. I have hope in this province, that the people who will be watching these proceedings, the tenants, will be organizing, and that in that organizing effort it will teach some of you a strong lesson: that they want protections. This economy is not giving them the protections they need, and the changes you are making generally and specifically with this package, which is not a tenant protection package, are going to hurt them more.

As you go and consult them, as I know a number of you already have, you will find that they are not happy. They're not happy with the changes you're making, because the bottom line is that when they get an increase and they have no protection, they're going to be angry at what you're proposing. I suspect all of you will feel this anger, and that will teach us all a good lesson in terms of the kinds of things that we as governments can introduce. So I'm very optimistic in the public and the public's power to be able to teach us lessons not just during an election time but in between, when we introduce measures that are going to further devastate our economies in general and people in specific.

Mr Chair, I'll be looking forward to the hearings, the deputations this afternoon and for the next three weeks. We'll be in constant contact with M. Leach and others around this. So thank you very much for the opportunity.

The Chair: Anyone else? No further comment?

Ms Marilyn Churley (Riverdale): How much time is left, Mr Chair?

The Chair: About five minutes.

Ms Churley: Five minutes. Thank you for the opportunity.

I just want to pick up where my colleague left off. I've said before to you in the House, Mr Leach, and I'll say it again, that these changes, your changes, will create the biggest housing crisis in Ontario that we've ever seen, and that's a fact. The reality is, as pointed out by my colleagues this morning, that this is the worst time to be bringing in these kinds of changes. There are already the beginnings of a housing crisis out there, I know at least in the Metro area, as a result of the welfare cuts and some of the user fees this government has imposed.

We are just starting to see the tip of the iceberg on a major housing crisis. If you will recall, the reason that governments over the years, including Conservative governments, put in some forms of rent controls and started to create more and more co-op housing and other forms of social housing was because — it didn't just come out of the blue. Somebody just didn't wake up some morning and say, "Gee, wouldn't it be nice to build affordable housing." It was because there was a crisis out there. Governments over the years — Tory, Liberal and NDP governments — have responded to a growing crisis.

What's going to happen now as a result of these changes and the fact that poor people, those on welfare but also the working poor and people who are losing their jobs, are not going to be able to afford an apartment and we're going to have more and more people on the street? We noticed last winter that there were more families — mother, fathers and children — living temporarily in motels because they had no place to live over the course of the winter. My fear is that this is going to get worse.

Interestingly enough, you keep talking about expense to taxpayers. This actually is bad for families, it hurts the children, but it also costs taxpayers more to house these people in motels over the course of the winter. It costs more for health care for these people.

I hope you're open to changes. If you hear overwhelmingly, which I think you will, from tenants these same concerns that are being expressed here today, if you hear overwhelmingly that people feel this is not going to protect them, I hope you will be willing to withdraw this legislation and instead work on the existing legislation brought in by the NDP government and strengthen it, because that is what tenants want.

When you say the system needs fixing, everybody says that. I know that when we brought in our legislation — and one thing I agree with in your statement today is that you're not going to find a solution that both landlords and tenants are going to be happy with. The reality is, as my colleague Dave Cooke, who was our housing minister at the time we brought in new legislation — this is one area where you have to choose sides. There is no com-

promising in this one. At the end of the day, you have to protect tenants. You have to choose sides.

With what you've done here, the landlords, you're right, aren't going to be totally happy because they would like fewer protections for tenants, but the reality is it's the tenants who are going to hurt the most, and I think you know that. So I hope that you are willing to choose sides in this and to protect the millions of tenants across the province. I doubt very much, Mr Leach, that you're going to want to have the legacy when you're not re-elected, partially because of this new rent control, you personally anyway — your legacy could very well be that you caused the worst housing crisis ever to be seen in Ontario. You will have an opportunity to withdraw this legislation and start all over again.

I will now give my colleague, Mr Silipo, a few minutes, if we have more time left.

The Chair: Mr Silipo doesn't wish to use any time, so, Mr Minister and staff, thank you very much for being with us this morning. We appreciate your attendance.

Hon Mr Leach: Is there opportunity for comment, Mr Chair?

The Chair: I'm sorry, Mr Minister, you used up your hour. We're going to take a five-minute recess before the first presenters come forward.

The committee recessed from 1052 to 1100.

BUILDING AND CONCRETE RESTORATION ASSOCIATION OF ONTARIO

The Chair: We're ready to return to work. Our first presenters this morning represent the Building and Concrete Restoration Association of Ontario, Murray Gamble, the current president, and Harry Hakomaki, the past president. Welcome, gentlemen. You have 20 minutes. Any time you leave at the end of that 20 minutes will be available for questioning, beginning with the official opposition, the Liberals, and it will be divided evenly. The floor is yours.

Mr Murray Gamble: Mr Chairman, ladies and gentlemen of the committee, good morning. My name is Murray Gamble. I'm president of the Building and Concrete Restoration Association of Ontario. With me is Harry Hakomaki, our past president. Our association is made up of contractors, material suppliers, engineers and engineering consultants specializing in the restoration of building exteriors and parking garages. We welcome the opportunity to present our views on the government's discussion paper this morning.

I'm going to start off by reviewing the present situation and how current rent control legislation affects our industry. I will then turn it over to Mr Hakomaki, who will review our position on the proposed legislation.

The rent control legislation, first Bill 4 and now Bill 121, has had a very severe impact on our industry, mainly because it prohibits owners from recovering costs for major repairs to apartment buildings. The devastating economic impact on our industry showed itself in the loss of approximately 5,000 jobs in 1991. A survey of our industry indicated that this was mostly because of the rent control legislation, Bill 4 and Bill 121.

Work immediately came to a halt in our sector. However, the problems are still there and have worsened.

In many cases safety has become a concern as well, as buildings have continued to deteriorate and many problems have gone unresolved.

Studies indicate that up to \$10 billion worth of repairs are necessary on existing apartment stock in Ontario. Of this, about \$1 billion is accounted for by the need to repair exterior facades, building envelopes, including the roofs, garages, balconies etc, which is our sector. In order to return our sector to health, changes need to be made, not only to allow for recovering costs for major repairs, but to other regulations which prevent the cost of operating buildings being covered. When landlords cannot cover the costs of their operations on buildings, obviously it has the effect of further impeding payments for repairs.

I'd like to turn it over to Mr Hakomaki now to review our position on the discussion paper.

Mr Harry Hakomaki: Ladies and gentlemen, we want to strongly support two components of this discussion paper: the provisions which relate to capital expenditures and the general direction which permits the market to work.

If we look at the capital expenditure side, we feel the change that's proposed in this legislation, the 4% cap with a 2% carryforward, is a necessity. It'll go a long way to bringing back some of the jobs that were lost under the previous legislation. In fact, we feel that probably 30% to 40% of the jobs that were lost under the previous legislation can come back if the landlords are allowed to set aside funds for capital repairs.

I'd like to emphasize that we regard the ability to repair the buildings as being in the interests of both the landlords and the tenants. I think probably the best protection that any government can give its tenants is to provide a safe and well-maintained home. The other area, which is the removal of the regulations which impede the market to operate, we also support.

The discussion paper deals with removing regulations. As businessmen and contractors, we strongly, firmly believe in removal of any regulations that impede progress or make your job more difficult as being in the best interests of everyone involved.

We strongly support the idea of the landlord and tenant being able to negotiate their rents. We do this every day in our business. We feel a negotiated settlement on any issue is far above anything that is imposed or regulated. I think this would be something new that both tenants and landlords would welcome, and we strongly support it.

I can only emphasize that the job market is there. People want to get back to work and we feel this regulation change will help us to get our people back to work.

Mr Gamble: In conclusion, we appreciate the opportunity to present our views today. We urge the committee to move ahead. We think there's a clear signal needed to be sent to the landlords that restoration can be paid for and much-needed work can proceed quickly to address safety concerns and create more jobs in our industry. Thank you.

Mr Mario Sergio (Yorkview): I have a couple of questions. With respect to all repairs and maintenance and stuff like that, I believe there is certain protection within the bylaws and property standards of the local

municipalities, that if an inspection is conducted and repairs are to be made, they will be made; the municipalities will go after a particular building. What has been the problem with your profession in conducting those repairs?

Mr Gamble: Essentially the problem has been that the money has not been in the budgets of the buildings to undertake these repairs. In our sector, repairs to building exteriors, parking garages etc, many of these programs can run into the millions in terms of costs which really cannot be recouped under the current legislation. Even if owners are trying to do the best they can, quite often the deterioration can get ahead of them and they do not have the funds to deal with it.

Mr Sergio: The proposed legislation says that an existing building will still be protected under rent control. Am I right?

Mr Gamble: Yes.

Mr Sergio: How is this going to help your profession, if those landlords will still be guided by the same rules and regulations?

Mr Gamble: We see this as an important first step in that there is some extra allowance for recouping capital expenditures in this discussion paper.

Mr Sergio: But those allowances exist now.

Mr Gamble: But the 4% is an increase over what's there now, the way I understand it.

Mr Sergio: I wish to pursue this particular one because at the moment not only are you allowed to get whatever increases the government allows you, but also to conduct those repairs and charge the tenants. What has been the problem with your association?

Mr Gamble: The problem has been that the level allowed to charge back to the tenants has been too low to actually cover the exact costs of the repairs. For our association, ideally, we would be happy if the market would prevail and landlords could recoup whatever costs they could from the tenants. Conversely, tenants would move to the buildings that were best maintained. That would be the ideal for us. We are not saying that this discussion paper is the ideal for our industry. What we're saying is that in the past there has not been enough ceiling for the landlords to recoup costs on major expenditures.

Mr Sergio: If you are a landlord and you've got to put on a new roof, don't you charge the tenants the expenses of putting up a new roof?

Mr Gamble: You should be able to, but what is happening is that in some cases the operating costs of the building are such that the rents just cover those and very little more, and these extreme costs of putting a new roof on, of fixing a parking garage, can't be covered.

Mr Sergio: That is above the rent increases. The landlord gets the normal rent increases plus whatever repairs he makes to the particular building, doesn't he?

Mr Gamble: Not completely; it's capped. There is a cap there and that's the problem; the cap is too low.

Mr Sergio: You don't think that's enough?

Mr Gamble: It's not enough; that's what our position is, sir.

1110

Mr Marchese: I apologize for not being here. A few of us were out there in a scrum. When you have only one person here, it's difficult to be in two places at once.

On the issue of the kind of capital that you had not being sufficient, was that capital that was allowed under the cap being used to do the repairs, do you think? Do you think it's being used by every landlord?

Mr Gamble: Our response would be that obviously not every landlord would be using it. I would say the majority of them were, and the majority of them were running into problems finding enough money to undertake large restoration projects. On day-to-day maintenance, it may have covered it okay, but these are very large projects that have to be undertaken and there was not enough allowance within the old guidelines to cover that.

Mr Marchese: It was felt that what we allowed was sufficient for capital repairs, and if it was of an extraordinary nature they could appeal that and have yet an additional increase to permit some of the things you're talking about, but you still argue, I presume, that in spite of the additional increase they could have appealed for if there were extraordinary problems with the building, that still wasn't enough?

Mr Gamble: I can certainly say that the best argument we have is that the level of activity in our sector dropped in half as soon as the new legislation came in. We lost a lot of jobs. A lot of our companies were drastically hit. A lot of jobs that were on the go at that time, necessary restoration jobs — balconies, exterior façades — things that would make improvements for tenants, stopped dead in their tracks because the funding just couldn't be recouped.

Mr Marchese: The kind of work you used to do has probably dropped across the board. It isn't just in a particular area; it isn't just because of rent control necessarily. The whole construction industry was dead. We were the only ones building. That's why some of you were working. Without us, you wouldn't be working, I suspect.

Mr Gamble: We have made allowances in any of our predictions for economic conditions. We agree that economic conditions have caused some problems in our sector, we understand that, but when you compare the level even in a hard-hit sector like the commercial sector, which was very badly economically hit, it's nothing compared to how business fell off in the apartment sector. That's really what we're doing: looking in relation to that.

Mr Marchese: My concern is that landlords are not spending the money for the capital repairs for which they have money, and in the end they complain that perhaps it's not enough. I'm very concerned about that.

Mr Hakomaki: One point that you might want to realize when they're talking about capital expenditure is that when you're dealing with X dollars and Y dollars, the proper route to go to maintain your building is to spend more and make it last longer and do the repair properly, and the other is that if I've got limited funds, can I get by by doing a temporary repair, the tendency or the mentality seems to go, "Let's do temporary repair to spend only what I've got allowed." It sometimes is the wrong way to go and is money wasted, so what we're trying to do is encourage people to do permanent and proper repairs, which cost more money.

Mr Marchese: I appreciate that. That's why I've also argued that if there were extraordinary capital repairs needed to be done, there was a further allowance within that cap that allowed or permitted them to appeal, and if those costs could be justified, they obviously would have gotten the extra money.

Mr Hakomaki: That became the deregulation that we encourage here. The impediment to going ahead was the bureaucracy you had to deal with to prove something. You can't plan by having to justify something down the road later on. You've got to plan your repairs years ahead.

Mr Marchese: My worry is that if that means the tenants are going to be hit with yet further increases, that's not acceptable, and that's what this proposal does. There has obviously got to be another way to deal with that, and that way is not to leave tenants unprotected in the way this package does.

Mr Wayne Wettlaufer (Kitchener): Mr Gamble and Mr Hakomaki, thank you for appearing today. In my previous life I was an insurance broker and prior to that I was a physical risk inspector for an insurance company for nearly 20 years, so I have some experience in what you're discussing here in your paper. Safety should be a primary concern. We don't hear it emphasized by the members of the opposing parties.

I'm a little flabbergasted by the figure of \$10 billion in repairs that you mentioned. I know we have an aging apartment population. Can you give us some idea where you come up with a figure of \$10 billion?

Mr Gamble: Actually, that is not just for exterior restoration; that's maintenance dollars that need to be spent on the entire apartment stock. That's heating and electrical etc, all of those things. Those numbers come from compilations of studies conducted by the Ministry of Housing and other agencies. It's an overall number. The time frame on it I believe is within the next five to 10 years. That is what they're looking at as going to be needed to retrofit our existing apartment stock. But it includes everything, not just our sector. It includes all aspects of maintaining apartment buildings.

Mr Bruce Smith (Middlesex): Welcome to the committee this morning and thank you for your presentation. I think it's very interesting that your statistics show approximately 5,000 jobs were lost because of previous legislation. It's my position that in all likelihood there would be a percentage of homeowners and tenants that would have been impacted by that type of job loss in the province.

In your presentation, you've identified two areas of interest or of support that you like about the documents. Are there perhaps two other areas that you haven't identified that you either like, you think are absent or you think should be added to the report, either in support of or in opposition to it?

Mr Gamble: We feel that generally it's a fairly balanced piece of legislation. We understand that rent control is always a very difficult issue. From our perspective, obviously, more money that could be spent on repairing buildings or emphasizing repairs to buildings would be better. However, we also realize that there's a realistic approach out there, that you have to protect

tenants; you can't just throw tenants to the wind. It's a balancing act: Landlords should not be subsidizing a tenant's rent and, conversely, you don't want to see landlords making excessive amounts of money at the peril of tenants.

While we can look through it and say that in a perfect world there should be some other changes, we see this as a good first step, we see it as a rather balanced piece of legislation and we see that it can give us some light at the end of the tunnel, so to speak, in our business. We can see some work starting to happen again on this apartment stock.

Mr Tilson: During the Bill 4 and Bill 121 hearings, owners of buildings came and said it was nigh to impossible to plan for making capital expenditures such as you're suggesting for balconies and garages and other types of things like that. I don't know how much time has elapsed since Bill 4; it's got to be almost four or five years. In your view, as far as the area is concerned — and I suppose that's mainly Toronto, but it presumably goes outside of Toronto — what is the status of the safety of many buildings, particularly stock that goes back 20 or 30 years, with respect to balconies and garages?

Mr Gamble: We see a wide variety of degrees of integrity in these structures. Some buildings — newer buildings, buildings which had repairs done just before the change in the rent control legislation in 1991 — are in pretty good shape. There are, however, a lot of buildings with some serious structural problems in them right now, that being delamination or small concrete falling off of the buildings from the exterior, whether it be from balconies or façades, and as well in garages, not to mention a lot of what I would call living standard problems, in that a lot of leakage problems in the buildings exteriors, while they're not life-threatening, are definitely of major concern for tenants. Certainly the level of repair of the buildings in the last five years generally has deteriorated significantly, and in some cases it has led to safety concerns.

The Chair: Thank you, gentlemen. We appreciate your presentation to us this morning.

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HEATHER ADAMSON

The Chair: The next presenter is Heather Adamson. Good morning, Ms Adamson. Welcome to our committee.

Ms Heather Adamson: Good morning, members of the provincial Parliament. My name is Heather Adamson and I would like to express some of the concerns that I have about the upcoming new proposed legislation, termed the new tenant protection system. We are lower-middle-income apartment tenants and pay \$930 per month for a two-bedroom dwelling in Metro Toronto. This is over 45% of our net income. It is our fear that this proposed legislation will cause already high rents to rise dramatically.

Back in 1991 I lived in an apartment building on 30 Godstone Road in which the landlord attempted to raise the rent 61% in one year. We believe a majority of landlords will attempt something similar again should rent control be lifted. We also believe that should the land-

lords get the increases in rent they claim they need to upgrade and/or maintain present buildings, they will not necessarily use the increased income intelligently in refurbishing projects or at all in the buildings.

An example of this: In our present building at 145 Marlee Avenue, they recently changed the lighting system in the main lobby area. They decided to install high-energy-consuming, high-maintenance, incandescent lightbulbs instead of an energy-efficient, long-lasting, fluorescent lighting system, which no doubt Ontario Hydro would have provided an additional monetary incentive to install.

One of the main ideas of the Common Sense Revolution is to put more money back into the hands of the average consumer, which is why the present government is implementing tax cuts. If the average consumer has more disposable income available, then it is likely that more consumer items will be purchased, thus stimulating the economy and creating jobs. If rental property owners demand and get, for instance, a 20% increase in rent, then I fear that the tax rebates will all end up in the landlords' pockets. The average consumer who is a renter will be likely to have even less money to spend on consumer items than before, thus retarding the economy and causing higher unemployment.

The few landlords receiving a great amount of money from the many tenants are unlikely to develop the same volume of consumer goods purchases as would occur if the money remained with the tenants. Even if more money in the hands of landlords will lead to development of new buildings, which is questionable, this would provide some construction employment but would fail to offset the loss of jobs due to weak consumer spending caused by tenants being squeezed by rent hikes.

Another problem I have regarding the new proposed rent control is that tenants who still reside in their apartments will feel pressured into staying in their current units because every other newly available apartment suddenly will have a very high rent put on by the landlords of the buildings. The main reason tenants like us are trying to move out of our present place is to move to a more affordable apartment that is within our modest budget. This is difficult enough at the present time in the greater Toronto area since the rents are very high here. In comparison, Montreal rents are approximately 40% lower for a similar dwelling, yet property taxes, energy costs and general services provided are pretty much the same as Toronto. So why is it that property owners cannot make a reasonable profit in Toronto?

One of our main worries is that owners will attempt to raise the rent by large amounts in hopes of gaining a significant increase in income, even if the market will not bear it. It may take two years for them to realize that their new, very high rents are not sustainable as they can only rent some of their units. Meanwhile, they will have caused disruption and hardship to certain tenants who for various reasons had no choice but to pay the exorbitant rents before the market stabilized. After all, everyone needs a roof over their head.

I would also like to add that it would be unfortunate if the rent registry were eliminated, because it provides information on what the maximum legal rent on their unit

is and what services are included in that rent, along with how much of an increase over the above guideline a landlord has applied for. It is important for tenants to still find out about this information.

Thank you for your attention. I hope you will take our concerns into careful consideration. Thank you very much for listening to my concerns.

The Chair: Thanks, Ms Adamson. We've got about four minutes per caucus left for questions, beginning with Mr Marchese.

Mr Marchese: Ms Adamson, thank you for your presentation. This is the kind of human response we're going to be getting from people who are going to be very worried about this package. But I'd like your reaction to the title of this package. The title of this package is the "tenant protection package." Do you feel somehow that this title is either fair or going to be in your favour?

Ms Adamson: I don't feel it's going to be fair and I don't think it should have the title "new tenant protection system," because there is no tenant protection system. If the landlords get to charge whatever rents they want as soon as an apartment is vacant, and we are looking for a new apartment, we'll have to go by what the owners want.

Mr Marchese: Why do you think this government would want to call something that? Why do you think this government would say this is a tenant protection package when in fact it means, for 70% of the people, a rent increase? Why do you think they would do that?

Ms Adamson: I think the government is trying to protect basically, or help out, the owners. They want to see the owners be able to make new apartment buildings, charge whatever rent they want. They're saying they're going to be reasonable, but I don't believe that. With rent control not being lifted, the owners have to restrict themselves on how much they can charge through the guideline. If there is no guideline, they can charge whatever they want.

Mr Marchese: You mention that one of the reasons people move is to find more affordable housing and not more expensive. Obviously, with this kind of package, if you move, you're going to be hit with an increase. You won't want to move any more. What is your sense of what people are going to do as a result of knowing that if they move they're going to be hit with an increase? Will people stay in their apartments? Will people want to move? Will they simply live with whatever situation they're in, whether it's an abusive relationship or whether they're in an area which they're trying to get out of? What do you think will happen?

Ms Adamson: First of all, people who are already in their units will be afraid to move. They will feel, and this is the only term to say, prisoners in their home. They will say: "I'm paying \$930 a month rent. I've checked into other units besides where I'm living and the rents are \$1,000 or \$975 a month. Well, I'm paying that now. I'm going to get another increase, based on what the guideline is, close to that amount, so I'm not going to move. I'm not happy staying where I am but I don't have a choice. Either I stay where I am and pay close to what the new rent is going to be on another unit or I just pay \$1,000, which is a little bit more money." Still, people

don't want to move because they're scared of the new rent hikes.

Mr Marchese: I think you make a good argument. In fact, I was making the same argument earlier on about the effect this will have on the economy and on disposable income. If people end up paying more to rent, they will have less to spend on consumer goods, thus further weakening our economy.

Ms Adamson: Absolutely. It is a known fact that most people buy a lot of consumer goods for their apartment. Something I should mention — Consumers Distributing is a consumers' company and they are closing many of their stores in Toronto. These are people who buy consumers goods. In fact, if you pay a lot of money for a new apartment, what money do you have left to purchase consumer goods? You don't. All your money and your paycheque is going for rent, and as it stands, the wages for your jobs are going down, not up.

Mr Dave Boushy (Sarnia): In my home town, Sarnia, the vacancy rate is very high. I think we are among the highest in Ontario, about 12%, and the rent is pretty low compared to Toronto and other places. The reason for it is because there is an abundance of apartments to rent. Because of that, as you realize, the tenant has a choice to go from one apartment to another.

Because of the low rate of vacancy in Toronto — as you indicated, rent is high. What is the solution, in your opinion, to have the rate higher? Is it for an abundance of rental apartments to be available and is this what this government is trying to do through this legislation? Is there any other way, in your opinion, to make the rent go lower, and what is it? What is the solution?

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Ms Adamson: My opinion is, right now the rents are too high as it is. I am in the process of looking for another place and I've come across that the rents, phoning up, are too high. It is true that when there is an apartment available that is at a reasonable price and I have phoned up and inquired about it, there many people trying to get into that apartment to put an application in. I would say there are more people looking and there are fewer apartments available. In my opinion, if the owners get more money for their units, in whatever amount they're asking, I do not believe they will maintain and fix the buildings up properly. I have seen some results in these buildings as it is.

Mr Tilson: Just continuing on that point on the issue of repairs and safety, we will be pursuing the issue, or it has been recommended in the paper at least that we will be pursuing the issue of complying with property standards, and buildings, for safety purposes and other purposes, will be obliged to meet the various standards.

We've just heard the last deposition. I don't know whether you were in the committee room when the cement and concrete people made their presentation. They talked about the amount of repairs that are needed. They estimated that \$10 billion worth of repairs are required for Ontario's aging apartment stock. My question to you is — and I appreciate your concern. No one wants their rent to get out of control. No one wants that and I appreciate that.

The difficulty is, if we're to live in safety, if we're to have safe buildings, safe balconies, safe if you live in an

apartment that has parking, and there are all kinds of other areas that require safety, it's going to take a substantial amount of money to maintain the housing stock, much of which is 20 to 30 years old. Notwithstanding your comments about the fear of rent increases — we all have that — where's the money going to come from?

Ms Adamson: I believe right now owners, number one, are making a good enough profit. Also — I don't know where it's going to come from; I would say more or less from the owners on the profit they are making — they must be able to maintain the buildings. There are some cases where owners make a good profit in a building and yet they want to jack up the rent more. They say it's to fix up the building and some of them pocket that money. I happen to know one building I lived in that it was happening to.

Mr Tilson: During the hearings for the two bills that were put forward by the NDP government, Bill 4 and Bill 121, it was suggested by owners that if they didn't have these resources they would be obliged to close those buildings down. Those are facts that have come to a committee of this Legislature. You've made comments that owners simply aren't making moneys available. Do you have any information for the committee that would substantiate what you've just said?

Ms Adamson: Basically we're going back and saying that I feel they are making a profit whereby they can fix up the buildings and you're asking me for some facts on that.

Mr Tilson: Yes.

Ms Adamson: All I can say is in the building, for instance, I was living in, which I'm still living in, we had a heating and a hot water system problem. We had previous property management that did not give an adequate heating system. We found out by the new people who took over the building that all they had to do was have another boiler system. There was another boiler system in that building and all they had to do was get somebody in to check it to make sure it was running properly and there'd be proper heating and there'd be proper hot water.

I've been living in the same building for at least four years now and this year, or I believe last year, is when the heating system and the hot water system was starting to work. Because of a boiler system that was not checked into by the previous people, that's where the problem came from. They found this new boiler system. It didn't cost much to get it fixed, to make sure it was running, and now we have proper hot water heating. But in the past years when the previous property management took over that building, we did not have a proper heating system. In fact, the previous owners of that building had to go to court because the tenants were suing them. We didn't have proper heat and we were paying a lot of money in rent.

Mr Kennedy: Thank you very much for your well-thought-out presentation, Ms Adamson. I wonder if you would agree that if the government is going to make these kinds of proposals, they should know and they should be able to explain what the causes are for high rents in Metro Toronto.

Ms Adamson: I would agree with you on that. I think they should sit down with some of the owners — not all of them but a certain number of owners — and find out, if they want to charge whatever they want in rent, why? What is the reason? What are they going to do with that excess amount of money? How are they going to fix up the buildings? If they need more of this money, where are they going to use that money? What are they going to do? Are they going to fix the hallways? Are they going to fix the outside of the building? Are they going to fix leaking areas, the roof? The government should sit down with the owners and say: "You're charging more money in rent. What are you going to do with that money and where is the money going on the repairs that you say you need to fix up?"

Mr Kennedy: They're saying to you that they have to take away your protection in the marketplace in order to make this market better. Have you heard any arguments that make you believe that?

Ms Adamson: No, I have not. As I said before, I believe the owners are making a good profit. If they want to really fix up the buildings, there is a concern: What if they want to fix them up so much and make it into a luxurious apartment and maybe we're not going to be happy with that? And of course our rent's going to go up more when they make all these fancy changes in the building.

Mr Kennedy: You're aware that this legislation includes a proposal to get rid of the protection act for rental housing?

Ms Adamson: Yes.

Mr Kennedy: If your building was made into a condominium, could you afford to buy it?

Ms Adamson: Absolutely not. In the new tenant protection they say that the owners can decide on their own; they don't have to get approval from the municipalities, if I'm correct.

Mr Kennedy: Right. That's correct.

Ms Adamson: They can make a condominium, they can do luxurious renovations, and if we don't like it, we're given a certain amount of notice time to leave.

Mr Kennedy: Right. One of the members opposite said that no one wants to see rents go out of control. From what you're saying to us, you're already paying 45% of your income in rent. I think it might be helpful, particularly to the government, to explain to us what that means. When so much of your income is going to rent, what can't you afford? You mentioned how much you're paying. I don't mean for you to get overly personal, but can you elaborate on that a little bit for the committee?

Ms Adamson: I can explain that. First of all, I don't know if this — my husband has a very good job, and the income that he makes, it's true, a good portion of it goes to rent. Also, I get interest money and interest rates have gone down considerably and part of that money I use goes for my rent too. When we combine that income together and we have to pay \$930 a month rent, that's a lot of money from both parties. So yes, it's true; his money and my money go for rent and it's just too much. That's why we're looking for a cheaper, affordable apartment.

In the next few weeks we're going to get our 90-day notice renewal, how much our rental unit is going up to

in December, and we know it will probably go up to at least \$950 or \$975, which is way over what we can afford. We're trying to go within our budget — how much he makes, what money I have coming in, what we can afford — and we definitely cannot afford this price.

Mr Sergio: Just one question, Ms Adamson. One of the objectives of the proposed legislation is to focus on the protection of the tenants. Do you believe as a tenant that the proposed legislation is focusing more attention on the tenant or the unit?

Ms Adamson: I believe they're focusing more on the unit. I believe there is no protection for the tenants based on what I hear about how much owners can charge on rent, based on harassment, that if owners want to and somebody's living in a unit right now, they can be harassed or pushed out. It is possible. Once rent control is lifted, there is no protection for the tenants any more.

Mr Sergio: Are you saying the proposed legislation is putting more attention, more protection, on the unit and the landlord than the tenant?

Ms Adamson: Absolutely. It's putting more attention on the unit and the landlord than the tenant. That's absolutely correct.

The Chair: Thank you, Ms Adamson. We appreciate your presentation here this morning and your interest in our process.

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UNITED TENANTS OF ONTARIO

The Chair: Our next presenter is the United Tenants of Ontario, represented by Debbie May and Barbara Hurd. Good morning and welcome to our committee. We appreciate your being here this morning. You have 20 minutes to use as you see fit. Any time you allow for questions would begin with the government. The floor is yours.

Ms Debbie May: Good morning. My name is Debbie May and I'm the former co-chair of United Tenants of Ontario/Locataires uni(e)s de l'Ontario, also known as UTOO/LUDO. Barb Hurd is the former coordinator for United Tenants of Ontario.

By way of background UTOO/LUDO, the provincial tenants' voice, was in existence for seven years. We had a mandate to represent the interests of tenants across Ontario. I say "had" and "was" because this government cut all of our funding in early 1996 and we were forced to close down all operations as of July 31, 1996. They have also subsequently rejected our innovative proposal for a self-funding mechanism. This would have ensured that we continued to promote the interests of Ontario's tenants at no cost to the government. We had proposed that tenants pay \$1 a month in addition to their rent, but we needed the required legislative assistance from the government to collect these fees. They rejected our proposal outright. With these actions, they have already dealt the collective voice a deadly blow.

I'd like to give you a brief overview of Ontario's tenants. There are approximately 3.3 million tenants in Ontario. This number represents one third of Ontario's population. We occupy an estimated 1.5 million rental housing units. The average household income for tenants

is approximately \$34,000 per year. By comparison, the average household income for homeowners is approximately \$60,000 per year. Ontario's tenants pay \$10 billion a year in rent. Of this, \$1.5 billion goes to yearly property taxes. I believe, based on these figures, members of the committee will agree that collectively Ontario's tenants are a major contributor to Ontario's tax base.

Tenants come from all income levels. The majority of low-income people are of course tenants. It is for this group of tenants that I will start to outline areas of strong concern that these proposed legislative changes will have.

First, let's look at what's happened to low-income tenants in the last five years. Approximately four years ago, welfare offices stopped providing last month's rent deposits to people receiving general welfare and family benefits assistance. This alone has made it virtually impossible for people on low fixed incomes to move.

In addition, this government announced during the summer of 1995 that it was cancelling the provincial and non-profit housing program. This program has been the main source of affordable housing over the past 10 years. There are currently an estimated 80,000 people sitting on these waiting lists. The future of the existing 84,000 public housing units remains unclear at best. This government has consistently stated that the plan is to sell these units, but significant questions have not been answered by the Ministry of Housing. To whom will these units be sold? What type of future does this government foresee for these tenants? Tenants need and deserve some element of security.

Finally, the slashing of the welfare rates by 21.6% has caused a surge in what we call economic evictions. At the legal clinic where I work, economic evictions have become one of the main reasons people call for help. Of course, there is no legal help available. There is no legal defence to arrears of rent. At the end of the day, people lose their housing.

Now that I've given you this brief history, I turn your attention to the government's proposed vacancy decontrol. This decontrol, in our opinion, operates to virtually ensure that these tenants will be forced to stay in bad housing situations. Even more troubling is the very real possibility that low-income tenants, many of whom barely make their monthly rent payments now, may be forced out of any housing. By this I mean vacancy decontrol may mean nothing less than homelessness if tenants lose their existing housing and are forced to face an unrestricted market.

Let's also look at the high end of the financial scale. In this regard, I refer you to the Lampert report of November 1995, which was commissioned by this government. On page 20 of the report, Mr Lampert states:

"A significant minority have relatively high incomes. Almost one quarter of tenants had incomes of over \$50,000 in 1993. Forty percent pay less than 20% of their incomes in rent. These are the types of tenants that typically are the main target for new privately built rental housing — \$1,000 per month represents only 20% of income for someone with an income of \$60,000."

Let's look at these incomes which are being quoted as able to afford higher rents. First, the figure of \$50,000 refers to gross income, not net. High tax rates will take

one third of this income, meaning a significant reduction in that figure of \$50,000. Second, this statement gives us no idea of the family composition of these tenants. It doesn't say what percentage of these people are single, couples, couples with children. All of these are statistics that need to be considered, as they all have an impact on a tenant's financial situation. Third, it doesn't consider the impact of such things as day care, food, the basic necessities of life. I would suggest that had these things been taken into consideration, Mr Lampert might not have been so quick to imply that there's a group of tenants that can afford higher rental payments.

Let's also consider one other factor. Historically, this group of tenants has been the group most likely to buy homes. I would suggest that an unrestricted market, meaning ultimately higher rents, would take owning a home out of the reach of many more people.

Studies show that approximately 70% of tenants will move once during any five-year period, so prior to the next election the majority of units will have become vacant and subject to an unlimited rent increase. People's reasons for moving range from seeking better employment opportunities to a full range of personal and family circumstances. This is true for all people, regardless of income. Moving always entails costs, even when rental rates are controlled. Under this proposal, these costs may skyrocket as rent controls are removed from the tenants' new homes. In essence, a tenant who moves, either by choice or necessity, will suffer financially as a result.

This government continues to say that rents will only increase by what the market will bear. In cities such as Toronto, which has such a low vacancy rate at the best of times, it just won't work. The low vacancy rate operates in favour of landlords with vacancy decontrol. In cities such as Toronto and Windsor, we believe what we will see is landlords charging higher and higher rents because demand far outweighs the supply. UTOO/LUDO believes that it will not be what the market can bear, but rather survival of the richest. We believe strongly that the most significant impact of vacancy decontrol will be the creation of a financial incentive for landlords to push tenants from their homes in order to reach that vacancy decontrol. This government knows this will be the case. You have acknowledged this by creating a new level of bureaucracy called the anti-harassment unit and by doubling existing fines. I would suggest to you that the doubling of the fines for harassment is simply sugar coating. The harassment that tenants already face from some unscrupulous landlords is about to be spread even wider throughout the tenant population.

I am suggesting that it is inconsistent for this government to bring in legislation that creates this type of environment, acknowledge it as they have with the anti-harassment unit, and then attempt to call this a tenant protection package.

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I ask that you turn to the first page of the tenant protection package which sets out its goals. The very first stated goal on page 1 is the following: "The ministry wants to reform the tenant protection system to protect tenants from unfair or double-digit rent increases...." It goes on further, but I'll stop there.

I'd like you to now turn your attention to the government's legislative proposal that affects tenants who are not forced out of their homes. Landlords will now be looking at guideline increases, a 1% increase in capital expenditures applications and extraordinary cost increases. Let's examine the capital expenditures increase. If we go back in history, in fact less than six to 10 years ago, landlords were receiving anywhere up to 50% increases under the old rent review system. Despite these increases, the current rent control legislation is being used as the excuse for why the housing stock is now in such a bad state of repair.

Is it the government and landlords' position that these units fell into their current state of disrepair only during the NDP government? This is not realistically the case. Perhaps instead of increasing the capital expenditure increase, this government should have had the courage to say there's been enough money to do these repairs already. I suggest to you Ontario's tenants have paid for the same repairs again and again.

The government, however, does not stop there. Now we are to face increases for extraordinary expenses. Under this proposal, landlords are to be given the right to increase rents without a cap to cover these extraordinary expenses. So each year that there's a property tax increase or hydro goes up, tenants will now be required to cover these business expenses of the landlord. As a result, we believe tenants of all income levels in this province will see double-digit increases.

The tenant protection package doesn't stop there. It will now be the responsibility of tenants to bargain with their landlords for above-guideline increases for a capital improvement. This begs a whole host of questions: What happens if a landlord and tenant negotiate for renovations and the tenant receives substandard work? If an agreement has been signed, as the government is suggesting, would that unpaid amount become arrears and therefore grounds for eviction? Who defines renovation versus needed repair? Once again, where is the tenant protection? UTOO/LUDO believes that the entire part of this government proposal is about how to increase the rent of sitting tenants.

I'd now like the members of the committee to consider the provisions relating to the protection of rental housing. It has been stated by the government, the Lampert report and innumerable reports and experts that there is insufficient affordable housing to meet the current demand, let alone the demand of an ever-growing population. How does this government respond to this? You respond by putting forward a package that repeals the Rental Housing Protection Act.

Members of the committee, we can't afford to lose any more affordable housing stock. The government agrees. You continue to pay lip-service by saying you are making these proposed changes to stimulate the construction of new units. These new units are no doubt supposed to help meet the demand, but the repealing of the RHPA runs counter to all of this. Under the new proposal, there is no requirement to replace demolished or converted units with new rental stock. Tenants will not be protected by repealing the RHPA.

Despite the fact that you repeatedly claim you will not bend to the will of special-interest groups, we state that

you are effectively selling out Ontario's tenants to the relatively small special-interest group — the landlords.

If you review again the goals on page 1 of this proposal, you'll see that Mr Leach says these proposals will ultimately create jobs and thereby stimulate the economy. What Mr Leach doesn't seem to understand is that as one of this province's largest consumer groups we are already contributing \$10 billion to the economy. We contribute through our rent. Making it possible for landlords to charge ever higher rental rates will not stimulate Ontario's economy; it stimulates landlords' bank accounts. It serves to create a tenant population facing more instability and uncertainty at a time when many haven't seen their own incomes raised in more than a few years and many are worried about holding on to the jobs they currently have. The members of this committee cannot possibly believe this will have a positive impact on Ontario's economy. No minuscule tax cut will replace the money that comes out of the pockets of one third of this province's population as we struggle to keep our homes.

It's also with disbelief that we read Mr Leach's goal of creating jobs through this proposal. This is the same government that axed the cooperative and non-profit programs which provided ongoing employment in the areas of renovations, construction, building and maintenance and administration; and the list goes on. Mr Leach has already defunded and therefore destroyed 125 non-profit and cooperative housing communities. This would have provided an estimated 3,330 person-years of employment in Metro alone. Let's be up front about this goal: It's not about the creation of new jobs. It's a faint hope of replacing what you've already taken away.

In closing, I'd like to ask the members to re-read this proposal tonight and go through it with a new question in their minds. Ask yourself, where is the tenant protection part of this package? When you have done so, you will reach the same conclusion that Ontario's tenants have: There is no protection in the tenant protection package. UTOO/LUDO asks that despite your party affiliation you find the strength not to endorse this proposal and in fact call it publicly what it is: the sellout of Ontario's tenants.

Mr Wettlaufer: Thank you, Ms May, for your proposal. I would like to ask you a question. We have some figures from the ministry that 80% of rental buildings in Ontario are made up of four or fewer units. We know that many of these buildings are owned by individuals, owned by pensioners. They are faced with repairs. These are not large land owners. You stated that tenants pay \$10 billion in rent a year. We heard a proposal this morning that these buildings are facing \$10 billion in repairs and maintenance costs. If tenants are paying \$10 billion in rent and the land owners are facing \$10 billion in repairs, where is the money going to come from for these landlords to pay for the maintenance and repairs necessary to maintain safety for tenants?

Ms May: Our question back to you is, where did the money go that we've been paying them all these years? Some of it is supposed to be invested in their buildings. If they didn't take the increases that they could have taken over the years, that they maybe forewent, then they've missed the boat. But there has been money given over the years. As was pointed out in the brief, there were huge increases over the past 20 years of rent review.

Mr Curling: This process is so flawed it ain't funny, this process of hearings. You bring to this hearing some very important information and questions, and it doesn't give us the time to ask you those kinds of questions that could help us a group to put them in a better direction than this new direction they have. I don't know if I'm going to have a question, because we don't have the time for a response. Even the concrete people who came also brought to this arena some very important information.

The point you made is well taken: The fact that these repairs that should be done, many of us would like to believe it's an overnight thing that happens. Over the years, many of these buildings were not being maintained properly. The fact is that now the high amount of cost to repair this must be done immediately on the backs of tenants. That is wrong and the government should be in place to make sure this sort of cost is not transferred to tenants. I just wanted to commend your organization and the tremendous work you're doing in regard to tenant organization.

Mr Marchese: Just a few points, because there's not time for a question, to thank you for your brief and to agree with everything you've said. This is not a tenant protection package; this is the sellout of tenants. I agree with that.

One of the major points you made in your earlier remarks was that you have been defunded. You haven't spoken at much length about that, but that's serious. They won't comment on that. But it means tenants are on their own basically. That's what they're doing. How can you have a package protecting tenants and at the same time defund organizations that are there to protect tenants? They're not interested in that. You've been defunded. Legal clinics have received cutbacks, which means that they're not able to do their job to defend tenants. People like yourselves are out of the way. How do they have the nerve to say this is a package that protects tenants? I just don't understand.

Ms May: In fact, their first page says it's for discussion. Effectively, they've killed this discussion. At the end of these hearings, I would like to know who they will be contacting to continue through the next four years to go through tenant protection.

Mr Marchese: The landlords.

Ms May: The landlords. It's the only existing group at that point. You've taken that away from us.

The Chair: Just to set the record straight on the timing of the presentations, the decision about 20 minutes was an all-party agreement decision, contrary to Mr Curling's comments.

Thank you very much for being here this morning. We appreciate it. We stand recessed until 1 o'clock.

The committee recessed from 1201 to 1300.

LEGAL CLINICS' HOUSING ISSUES COMMITTEE

The Chair: Our first group this afternoon is the Legal Clinics' Housing Issues Committee: Wendy Bird, chairperson and northern Ontario representative; Cindy Harper, the southwest Ontario representative; and Mary Garrett, the eastern Ontario representative. Welcome.

Ms Mary Garrett: My name is Mary Garrett. I'm the eastern rep of the Legal Clinics' Housing Issues Committee, lovingly called LCHIC, is a province-wide organization of legal clinics. We represent over 70 legal clinics in the province. Over 50% of the clinics' caseload is landlord-tenant issues where we represent tenants. I say that to you so that you'll know that our presentation is coming from the people who stand in the trenches working in this legislation on a daily basis.

We have done a brief — I believe you have it — just in case you want to follow along with it. We're not going to read it word for word. It's an extensive brief and there's no way we can get through it in 20 minutes, so we'll be summarizing for you.

Housing is an issue of fundamental importance. The discussion paper is both vague and sketchy in its proposals. It is also based on inaccuracies and assumptions in many vital respects. We are left in the unfortunate position of having to guess about what the intended reforms are. This makes meaningful commentary difficult at best. This is a paper that we say proposes to make sitting tenants sitting ducks.

I'm going to talk to you about the rent control aspects of the discussion paper. The term "tenant protection" becomes an oxymoron in the light of this discussion paper. It suggests tenants will be protected and then it says rent control will only affect those tenants who are not moving. The result is that it eliminates protection for a whole group of tenants and prospective tenants: those who would be moving from present family structures such as young adults or battered wives.

Most tenants, particularly low-income tenants and those new to the rental world, do not have the skills to negotiate on an even footing with a landlord and are not offered any protection under the new proposals. The remaining tenants — the sitting tenants or sitting ducks — will have the same protection as they have now except the cap on capital expenditures. This discussion paper proposes to increase that to 4% at a time that it proposes to cut the costs no longer borne in rent control.

As well, tenants will be expected to pay up to 4% above the guideline if utility costs go up. The landlord would also be relieved of the obligation to show tenants future utility costs so that the tenants will know when they can apply for rent decreases due to lower utility costs. If the taxes increase, the tenants will be required to pay rent increases to cover those of the increase, despite the guideline or the cap. In all of this, the landlord is not required to justify the 2% rent increase allowance they're allowed to receive under the annual guidelines. They've been allowed to get this under the last two pieces of legislation.

This is the part of the paper that I think is my favourite. The discussion paper also proposes to allow a tenant to volunteer to pay a rent increase. Now I ask you, why would a tenant want to volunteer to pay a rent increase? This is to get the landlord to do the major repairs and renovations, which is the purpose of the 2% rent increase on capital expenditures that they've been getting through the guidelines for the last two pieces of legislation.

If a tenant happens to reside in a mobile home park or the land-lease situation, they not only have the same

protections that the other tenants aren't getting, but if the government requires the landlord to replace an old system, such as a septic system or an electrical system or have them install a new one, the entire cost is allowed back to the tenant — 100% — despite the 4% cap. It makes one wonder just what protection a tenant is being given under this paper.

The discussion paper does say that government will get tougher on landlords with regard to requirements to do maintenance. It proposes to do this by providing the already overworked, underfunded property standards departments to have more powers. Power without financial or moral commitment is not a deterrent to landlords. The discussion paper says it will increase maximum fines for landlords who do not do repairs. In the past four years, there have been 29 prosecutions with respect to the 12 possible offences under the Rent Control Act. Although the maximum fine for landlords is \$5,000, the average fine in Toronto is \$350. Landlords cannot be forced to comply unless the threat of fines is serious and vigorously pursued, which would include also high minimum fines.

All the while that the discussion paper is discussing punishment to negligent landlords, it's considering discontinuing one of the most persuasive measures in the Rent Control Act: orders prohibiting rent increases until such time as repairs are completed. If the government is serious about encouraging landlords to comply, it would need to set high minimum fines, ensure property standards departments have adequate property standards bylaws and have the money to implement it sufficiently to service all tenants.

Another method of encouraging landlords to comply with maintenance requirements and other legislative requirements would be to licence them in the same manner that we licence real estate people, insurance brokers and street vendors. If they do not comply, they can be charged higher licensing fees and have their licence suspended or revoked.

Ms Cindy Harper: My name is Cindy Harper. I'm a lawyer with Neighbourhood Legal Services in London and I am the southwest rep for LCHIC.

I wish to address three issues. The first is the Landlord and Tenant Act proposals, the second is care homes and the third is the dispute resolution system.

First of all, with respect to the Landlord and Tenant Act proposals, we ask you to keep in mind that any changes made in this area must be done recognizing the fact that part IV of the Landlord and Tenant Act is remedial in nature. The Landlord and Tenant Act amendments of part IV regarding residential tenancies came into force in January 1970. This was a response to the Ontario Law Reform Commission report of 1968, which expressed concerns about the fact that the landlord and tenant law at that time was based on outdated feudal concepts in which landlords had bargaining power and tenants did not.

Any legislation that is now done in the area of landlord and tenant must also recognize the fact that housing is a very serious issue. We are dealing with people's homes. Rental accommodation is rental accommodation, but it's also a home. We must ensure that tenants continue to

have security of tenure and that their privacy rights are maintained and as well that their homes are maintained with proper maintenance and repairs.

The discussion paper refers to the fact that it will be clarifying the landlord and tenant legislation. We welcome this. However, it appears that in a number of situations, the proposal is actually extending the rights that landlords have. One of these examples is in the area of assigning and subletting. The discussion paper seems to confuse these two concepts, and it is our proposal that the concepts remain distinct. Tenants will now only be allowed to sublet and to assign after first getting their landlord's consent. We submit that the present legislation should remain, that these two rights should be distinct, and that if there's any modification to these rights, only a true assignment should be limited in any way.

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We agree with the discussion paper where it says that privacy rights are to be maintained. They must be strictly enforced and entry by landlords and their agents must be strictly limited. We agree that the situation with respect to privacy rights should be clarified; however, we disagree with the proposal that there be any extension of the rights to enter by the landlord.

With respect to care homes, we ask you to keep in mind again that these are people's homes. There is a broad range of accommodation that is considered to be care homes. They may be, for example, something similar to a boarding house or they may extend to something similar to a nursing home. We stress to you that it's important that elderly people and the disabled continue to have security of tenure and that their privacy rights be maintained. They should not have rights that are any less than those afforded to other tenants.

We wish to point out to you that we support the proposals that are made in the brief to you by the Advocacy Centre for the Elderly. We support their recommendations with one slight exception. It is our recommendation that there be no special and discriminatory fast-track eviction procedures for care home residents.

The third issue which I wish to address is that of the dispute resolution system. First of all, it is our position that landlord and tenant matters, given their serious nature, should remain with the court system. We recognize that the system may be costly; however, we suggest that there are proposals that could be made to the existing system to reduce costs and to meet the goals that are set out in the proposal. For example, mediation could be introduced, a duty counsel program and even simple procedural modifications such as a form that could be introduced for tenants to actually bring applications to court for repairs or other issues.

However, I wish to address an alternative dispute resolution system, and first of all I wish to say that the delivery system must be independent of government and it must be subject to legislation. The appointment procedure will be critical. It must be an open procedure, it must be an established procedure and it must ensure that the adjudicators who are appointed are impartial and well-qualified. There cannot be political appointments. This will undermine the credibility of any system that is set up. There must be ongoing training for the adjudica-

tors. They must be knowledgeable and they must have expertise. Adjudicators should not be selected simply on the basis of whoever is the lowest bidder.

We also suggest that there be voluntary mediation to cut down on the number of hearings that would actually be held, and if a hearing is held, we suggest that the Statutory Powers Procedure Act should apply to ensure procedural fairness. The tribunal should have clear, simple rules so that the parties are on equal footing and they all know what is expected of them. The tribunal should have charter jurisdiction, and any appeals from that tribunal should be to the Divisional Court on issues other than fact alone.

We also suggest that in order to ensure access to both landlords and tenants, who may both be of low income, costs should be minimal and any filing fees or other fees that are introduced should also be minimal.

Finally, with respect to any system that is set up, we suggest very strongly that it must be properly financed. A system that is underfunded, that has overworked staff, will not meet the requirements that are expected, and both landlords and tenants will not be given access to justice.

Ms Wendy Bird: My name is Wendy Bird. I am a community legal worker and I am the chairperson of the Legal Clinics' Housing Issues Committee. I'll address the Rental Housing Protection Act and mobile home park issues.

The Rental Housing Protection Act came into force in 1986. It was developed to respond to a serious decline in the amount of rental housing stock available to tenants and to protect tenants from unreasonable eviction. This decline in rental units was due to demolition, conversion to other uses and luxury upgrading of rental dwellings. From 1978 to 1985 in Metro Toronto over 11,000 units in buildings with six or more units were lost to these activities.

The Rental Housing Protection Act was enacted with two purposes to fulfil, the first being to protect existing rental housing stock from eroding to unacceptably low levels, the second to protect sitting tenants from being unreasonably evicted from their homes. The minister now proposes to reduce the mandate of the Rental Housing Protection Act to protect only sitting tenants and to remove the requirement for municipal approval. Removing the requirement for municipal approval repeals the Rental Housing Protection Act entirely. It removes the protection for sitting tenants as well. To repeal the Rental Housing Protection Act and call this tenant protection legislation is to make a mockery of the concept of tenant protection.

Without the limitations of the Rental Housing Protection Act landlords will once again be free to convert and renovate units. Conversion to unregulated cooperative and condominium housing gobbled up thousands of units prior to 1986. Existing tenants can seldom afford to buy their units and they end up dispossessed from their homes. There is every reason to believe that this conversion practice will begin again with the repeal of the Rental Housing Protection Act. This will erode the present rental stock, causing fewer units to be available for tenants. In turn, this will drive up the rents because of housing shortages and now the lack of control over rents.

The units that will disappear will be mostly today's low-cost, affordable units. The government believes that removal of rental control and the Rental Housing Protection Act will cause the private sector to build more rental housing to fill the gap. There is absolutely no reason to believe that this is true or will take place. Repeal of the Rental Housing Protection Act and rent control are only minor impediments to the private sector building new rental housing. If all the impediments were removed, the private sector has still made it very clear, it cannot build affordable housing. The rents that will have to be charged for new construction are at the top of the rent scale or beyond.

The Ministry of Municipal Affairs and Housing commissioned a report from Greg Lampert, an economic consultant, to look at the challenge of encouraging investment in new rental housing in Ontario. He informs the government that there is serious doubt whether relaxation of rent controls will itself be sufficient to stimulate private rental investment on the scale required. Mr Lampert goes on to say that there is a significant gap between the market rent for new rental projects and the rent required to make rental housing an attractive investment given the current costs of constructing new rental housing.

What are the real barriers that prevent the private sector from building? Mr Lampert says they are:

(1) **Taxation:** The federal government has substantially reduced income tax advantages. GST has increased construction costs. Property taxes are double or more for apartments than for owner-occupied homes and the province charges capital taxes.

(2) **Development costs:** These include municipal development charges; municipal fees, such as building permits, planning application fees, sewer hookup fees; municipal development requirements, such as parkland dedication, site control requirements and, of course, building regulations.

(3) **Financing costs:** It is quite clear that there is a restrictive lending environment for rental housing, which discourages investment at this time.

Many of these barriers are not within the provincial government's control to change. Mr Lampert claims that Metro Toronto now has one of the lowest vacancy rates in the province and that it is going to tighten considerably, whatever the government does. This situation is caused by the government's termination of the non-profit program, with no commitment by the private sector to build more housing. Repeal of the Rental Housing Protection Act will hasten the decline of the existing housing stock.

The Rental Housing Protection Act was extended to cover mobile home parks and land-lease communities in 1994. One of the major reasons for this coverage was to protect sitting tenants from eviction when landlords closed or converted parks to evade their obligations to make basic repairs to roads, sewers and utility hookups.

This type of housing is unique. It's unique because the tenant owns his or her home and rents only the land or site and the site services. Eviction for these tenants can be financially ruinous. The significant difference between mobile home park and land-lease situations and regular

rental housing is the relative captivity of the consumer. Uprooting the home is a truly expensive proposition, not only in dollars but in terms of emotional pressures. In many of the more rural areas of the province you will find that it is not possible to move the home; there is nowhere to move to.

I would remind the government that it is dealing with people's homes. Removal of the Rental Housing Protection Act does not protect sitting tenants at all; it leaves them vulnerable to unreasonable eviction. It will also reduce the number of units available to tenants that they can rent. There is no commitment from the private sector to fill that gap.

The Chair: Thank you very much, ladies. The 20 minutes has been fully used up, so there's no time left for questions. We appreciate your presentation here today and your interest in the process.

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GOLDLIST DEVELOPMENT CORP

The Chair: The next presenter is Mr David Freedman from the Goldlist Development Corp. Good afternoon, gentlemen. Welcome to the committee.

Mr David Freedman: Thank you very much, Mr Chairman. I'm the president of Goldlist Development Corp. I've already submitted to the committee a corporate profile, a very brief profile, so I won't dwell on what Goldlist is or what it's done over the last 40-odd years. As I will be speaking later on in the week on behalf of the industry as a whole, Mr George Goldlist will be speaking. He's the founder and chairman of Goldlist Development Corp and he will be addressing this meeting.

Mr George Goldlist: Mr Chairman, members of the committee, what I'm going to start off with some of you might consider a fairy tale. The fairy tale started in the late 1950s when George Goldlist built the first apartment building with elevators. We started in 1952. The first building we built with elevators was 60 suites. The nightmare we had: Was anybody going to come and rent those apartments? That was the major concern. We built 60 apartments, put all our investments in it and said, "Are they going to come to rent?"

Lo and behold, one Saturday afternoon, we opened up the building. It's snowing; these things happen. A man pulls up in a car. He says: "I've been watching this building going up. I want the top suite, the one-bedroom." I said, "If this fellow showed up in this weather, we're going to do all right." It took us not very long; we rented out the 60 apartments.

We learned one major lesson at that moment, that without tenants we're nothing. An empty building is a disaster, which many commercial developers know. Our philosophy was established at that moment: Our tenants are our customers. We treat them right. If we don't, they'll move out and nothing else will ever fill those buildings. Since that time we've built probably, gross, 20,000 units. A good number of those were rentals. We have followed our philosophy: The tenant is our customer.

Lo and behold, we continued building and the wisdom of the government in 1975 was to put in rent control.

Rent control was obviously put in to protect the tenant, and it hasn't worked. What it has done is driven people like me out of the business of providing accommodations, for which there are people out there knocking at our doors.

I graduated as a registered accountant. I got out of the accounting business because I said, "I don't want to be in the paper business." But let me tell you what's happening now: I go down my offices and I see papers, papers. We are building more paper piles to answer different government questionnaires and the different negotiating with the tenants by somebody, not us, setting the pace to treat the customer as — we love our customers and we treat them fairly. We built some pretty tall buildings. If we stack up the papers my people go through in a year, it's probably taller than any of our buildings, and we built some 40-odd-storey buildings.

It might sound like a fairy tale, but that's actually what happened. You've taken the business incentive out of our hands. We cannot negotiate with tenants. We cannot treat them fairly, because all we have is a directive: Either you do that or you don't do that. That is what happened. Gradually, we went into all kinds of other business producing houses. We produced under the MURB plan, under ARP, various schemes from the government to get rental accommodation built. They only worked so long, because government kept on changing its mind. The last thing that happened is that government got into non-profit housing.

My late father asked me: "George, what is non-profit housing? I don't understand it. Either you make a profit and you're in business, or you lose money." Unfortunately he died, at a nice age, so I can't explain to him that now the taxpayer pays the bill. You're probably now paying close to \$1 billion. I said, about seven or eight years ago, that the bill's going to grow. You build non-profit housing and somebody is going to have to pay the bill. The taxpayer, not the government, has been paying. It's probably, if I'm not incorrect, close to probably a \$1-billion annual subsidy, and it's going to grow.

We're at the point now where this government, in its wisdom, cut off non-profit housing. Unless private industry is welcomed back — stop all those barbed wire fences, knock down the barbed wire fences that you've put between me and putting up the new buildings, and get the red carpet out so we can get back in business and provide people with housing, which we know how to do. No government knows how to do it. I've got 45 years of experience, and I can say that.

We treat our tenants fairly, because they're our customers. We will not increase the rents God knows what numbers. At worst it's lying, at best it's insincere that I'm going to increase my tenants' rent 10% or 20%. What am I going to do with the building? That's no way of doing business. We have our record to stand for.

I want to also talk about the other side of the coin. We employ people. We have 200-plus people now on staff; we had more. Bill 4 came in; we reduced our technical service from 60-odd to 40-odd. The government at that time was protecting the tenants, and it's supposed to protect the workers. We had to make a choice to lay off

10 or 20 people. That bothered me just as much as I was worrying about whether the tenants would come.

I'll tell you right now that two weeks ago at my cottage on Saturday a fellow by the name of Santos Travilla dropped over and said: "Mr George," — that's my name, that's what they call me; he had coffee with me — "you know, it's 33 years that I've been working for you. I got married at that time." I don't know if he said he got the job first or got married first. It's 33 years he's been working for me, and he still works there. We hope to keep him on.

Also, the other end is this: We have tradesmen now who are sitting at home, people who are collecting unemployment insurance or whatever it is. They have no job. I can give you a few specific trades. I had a talk last week with a fellow by the name of Michael Zentil. He's a plumbing contractor. I asked, "Michael, how many people have you got working for you now?" He said, "I'm one of the lucky ones; I've got 38 still." He's doing a lot of maintenance. "How many did you have when we did some jobs?" He said, "I had 150-plus." I can go through the line: Cabello, a bricklayer. The men are sitting home; there's no work. I can go down the line of people who worked for us for years and years.

My view is this: This legislation coming up is not satisfactory to the industry. We feel let down by the government. Our Premier said, "We're open for business." If you're open for business, you've got to listen to us. We want to get back into the business of providing rental. Now, we have a lot of problems, because all these fences have been built up over the years.

I'll take one specific building: 49 Thorncliffe, which is 400 units. We pay \$2,600 a year average realty taxes, one bedroom, two or three. If this was assessed as condo or housing, there would be a minimum saving of \$75 a month that we could reduce the rents, and we went on record that we will. But all these politicians with their stories who say, "We're for you, tenants; we're against landlords," they're not for the tenant. If they were, they'd say, "Why are they paying \$75 a month more and why don't we address that problem?" We could drop the rents tomorrow if the assessment would be changed to rental accommodation the same way as condos or single-family homes.

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But you know what they tell me privately? The tenants don't vote; we've got to protect the single-family home owner. That's what they told me. Many times they told me that. Another politician comes up, off the record, and he says, "We don't want the seniors to lose their homes because the realty taxes would have to go up on single-family homes." I say: "What about the seniors who are tenants? Why don't we give them the reduction?" They have no answer, but they have one psychological block: "We're against landlords."

This is about this industry now. We could get back to work. We'll need a lot of help. Realty taxes have to be addressed. The GST has to be addressed. Did you know that the GST on rental accommodation is 7%, while if we build a condo it's 4.5%? I can never get the answer, logically, why. Are we discriminating against the tenants or is the government discriminating against the tenants?

That's a federal matter, but I think there are ways we could put our people back to work and look after the tenants. Thank you.

The Chair: Thank you very much, sir. We've got about three minutes per caucus left for questions, beginning with the official opposition.

Mr Curling: At the start I would say that George Goldlist is a good landlord and I have proof of that in that sense; I know you treat your tenants very well and have facts to back that.

You have made some points that are quite relevant. We talk of course on this committee that property tax must be looked at and rent control is not the devil that people talk about as causing not to build. If rent control comes off, would you build immediately, and would you build at the lower end of the market? While you're saying the government should get out of the non-profit, or whatever words you want to call it, building for people who can't afford the market rent normally out there, would you build immediately at the lower end of the market or will we have to wait until you've satisfied the top end before you build the lower end?

Mr Goldlist: We have now 250-odd units ready to start. The land price is right, interest rates are right, but we need help. We need help on the GST. There's no reason why the federal government should charge 7% on rental instead of 4.5%. The realty taxes is a must. We must treat the tenants the same way as you treat homeowners.

Also, the sales tax. I spoke to somebody from the government on the sales tax on building materials. The land is sitting there. Why don't you waive the sales tax on rental accommodation to let us build it? You're not getting the income anyway. The land is sitting there. You're not going to get any money. Get us started on rental accommodation.

There's no question the GST has to go down to 4.5%, and I think we should use our influence to get the federal government to waive that GST for rental accommodation for a couple of years. That, with interest rates what they are now, would close the gap and we'd put the shovel in in three months and get our people back to work.

Mr Curling: Could we say then, Mr Goldlist, that if the landlords and tenants get together, which is not impossible — it has happened — and say that the real enemy in all of this, as I said, is the government approaching this thing in a different way, more than saying it's the tenants' fault who want everything for nothing and the landlords who want all the amount of money and not giving you services — I would express now that I'm extremely disappointed that the minister is not here to listen. I think that is an insult to the whole process of consultation. It's the minister who sets this up, and you're coming here with some very pertinent information and so are the United Tenants association and all that. The minister is not here. I would hope the minister himself would have been here to hear some of this.

Mr Marchese: Mr Goldlist, just a few things.

Interjections.

Mr Marchese: Mr Chairman, there's a dialogue here.

I'm a big supporter of government intervention. That's what makes us different from the people on the other side.

Mr Goldlist: I didn't get that, please.

Mr Marchese: I'm a big supporter of government involvement and intervention to be able to regulate the problems that the market causes. Now, those folks over there don't seem to care about what the market does to people. I do. I'm not saying you don't care, because you pointed out that you care about the fact that renters are very important to you in what you do.

Mr Goldlist: That's obvious.

Mr Marchese: I understand. But I have to state from the outset that without government involvement, and often intervention, a whole lot of other people out there would be without basic minimum protections that need to be provided. So we need to protect the public interest in general.

You mentioned quickly that tradespeople are out there having no jobs. I've known this for a long time. I'm in an area where Italian Canadians work in the construction field and Portuguese Canadians have now literally replaced Italian Canadians in that field.

Mr Goldlist: There's still a few Italians in there. I wouldn't discount them.

Mr Marchese: There's still a few that I've known for many years, but they've been unemployed.

Mr Goldlist: That's right.

Mr Marchese: And the only body that has provided work for them has been the government through the building of cooperative —

Mr Goldlist: Because you stopped us from working.

Mr Marchese: Then there's the other point you said about the fact that we are in the way, that we don't know how to do it, that you guys know how to do it.

Mr Goldlist: You're damned tooting you don't know how.

Mr Marchese: What you want is a red carpet, you said, and part of the red carpet treatment comes with a whole list of things that you want. One of the things you mention is the GST, reducing that by half or eliminating that altogether.

Mr Goldlist: Yes. Why is it discriminating against the tenants? Why are all the politicians saying, "We're for the tenants," but they're ignoring the things that the government is against the tenants when you have to pay 7% on GST as a rental accommodation and when I build a condo I'm only paying 4.5%?

Mr Marchese: Mr Goldlist, what else do you need on that red carpet to get you and others going?

Mr Goldlist: It wouldn't be difficult if we sat down. We know one thing: The municipalities have to help us out, the province has to help us out, and the federal, and we would have a shovel working in three months there building rental accommodation. That's my business and I love the business. And let me also tell you, I'm a tenant of my own in my building. I go up and down in that building daily. The tenants are wonderful people; 98% of Goldlist tenants at least are good people. You get 2%, you never get that.

Your answer is, if I was a tenant, I want it as cheap as possible, but also I'm a person and I know that tenants cannot get the services unless I give my reasonable rent. That's obvious.

Mr Bart Maves (Niagara Falls): Welcome, Mr Goldlist. Mr Marchese is about intervention and messing up the market and he doesn't care about how his regulation messes up the market.

How many units has your company built in the last three or four years?

Mr Goldlist: The last three or four years, we've built a couple of non-profit.

Mr Freedman: Are you talking about strictly rental units?

Mr Maves: Yes, rental units.

Mr Goldlist: Only non-profit. We built post-1975 some rentals, but the last three years with the NDP government, Bill 4, we're out of business. They closed us up.

Mr Maves: Several submissions that people have given before you have said that the vacancy rate is 0.8% in Toronto, that you've been getting gigantic rent increases in the late 1980s, that over the past few years you've been getting rent increases and you haven't justified them. Some people have even said that landlords take the money and then don't invest it in what they say they're investing in. If that's the case, I can't understand why there aren't just multimillionaires all over the place who are landlords investing more and more money into this incredibly lucrative business.

Mr Goldlist: Because it's the big lie. They can get away with it.

Mr Maves: Can you explain that?

Mr Goldlist: The big lie they can get away with is that they are for tenants and against landlords. It's not true. If you're against landlords, you're against tenants because you are not looking after the tenants, because we're the ones who can provide the housing.

I can show you. If this committee really wants to see something, you should take half a day. We'll show you buildings where they're in excellent shape, there's no problem. We have a building now we need to put some \$5 million or \$6 million in to renovate the building. It was built 25 or 30 years ago. We were going to do it until Bill 4 came in — our friends to the right here — and we stopped that. We laid off people. We need redevelopment. It doesn't make any sense. But we've got to have the power. You took away the power from us, the government.

Either the government gets us back into business or you're going to have to come back and build non-profit again. That's the choice, if the taxpayers will put up with it, because they're writing the cheque. Like my father asked, "What's this non-profit?" If you've got the government behind you, they can issue the cheque, the taxpayers' money; you can build an apartment. My father never understood what non-profit meant. He was a small businessman. He came and helped me out in later years. He knew that if you don't make a profit, how do you stay in business? What's non-profit? I could not give him an answer. I give one now. The government — the taxpayer — pays the bills, and then you can build.

The Chair: Thank you very much, gentlemen. We appreciate your interest in our process.

1340

CANADIAN FEDERATION OF STUDENTS-ONTARIO

The Chair: The next presenter is the Canadian Federation of Students, Vicky Smallman, the chair.

Ms Vicky Smallman: I brought with me Ashkan Hashemi, our CFS researcher.

The Chair: Okay, great. We appreciate you being here.

Ms Smallman: We only plan to speak for about 10 minutes and then are happy to entertain questions. We brought along a more extensive brief that outlines our concerns in detail, and so I would ask the committee to refer to that specifically because 10 minutes isn't a lot of time to get really into the meat of our concerns with the proposals.

The Canadian Federation of Students-Ontario, an organization of which I am chair, represents about 125,000 students in colleges and universities across Ontario, from Thunder Bay to Windsor to Ottawa. We are very concerned about the proposals contained within the tenant protection legislation basically because students comprise a very large portion of the rental population, particularly in some communities, and as renters we really do need access to affordable, safe housing.

There is a direct correlation, we believe, between the availability of affordable, secure housing and accessibility to post-secondary education as well as the ability of a student to really perform well in his or her program. You need to be able to feel like you have a stable home and you can't be too worried about money because that can be quite overwhelming and can really compromise your ability to succeed.

We have experienced a number of attacks, I believe, this year, and from this government in particular. It's not just this government, actually; it's been building over the last decade. Our tuition has more than doubled and this year we have experienced the largest tuition increase in the history of post-secondary education in Ontario, 20% for university students and 15% for college students. This means we have a lot less disposable income to put towards things like rent, and the situation as it exists right now is not great for student renters. Especially in a city like Toronto, it is very difficult to get access to accommodation that is safe, secure and stable and also affordable, something that fits in with our budgets, which are quite minimal. We are really concerned that the proposals within New Directions are going to make things a lot worse.

Our primary concern is with vacancy decontrol. We don't really believe it will ensure a stable pool of affordable housing. Students are a very transitory population. We move at least once a year and sometimes more often than that depending on the situation. Therefore, vacancy decontrol is not really going to protect us from what we consider to be unfair rent increases, because as soon as you leave a particular apartment, the landlord has the ability to raise the rent as much as they would like. So we do feel that vacancy decontrol will have a direct correlation on the availability of a stable pool of affordable housing

We are also concerned with the proposed provisions on subletting. Currently students have the flexibility to be able to sublet their apartments when they choose. Students often have a need to sublet on a regular basis either to go home to their primary residences to work for the summer in order to earn money to come back to school or, in the case of graduate students, they may need to sublet their apartment for short periods of time in order to go away and do research.

The proposed provisions require that a renter have the permission of his or her landlord to sublet their apartment, and we believe that this eventually, maybe not in all cases but certainly it does open up the possibility for a landlord to be able to refuse a sublet and therefore move towards vacating the apartment in order to jack up the rent. We think this is just going to work with vacancy decontrol in terms of shrinking the pool of affordable housing.

These together, we feel, and a number of proposals contained within New Directions, will actually provide incentives for landlords to harass tenants. Students as a group are not very well-informed about their rights as tenants. Often they're just coming straight from home or they have a lot on their minds; they don't actually realize they have rights under the Landlord and Tenant Act and there is not a lot of public education out there about tenants' rights. Therefore, they will often put up with a very bad situation and a lot of harassment and perhaps a lot of negligence in maintenance and things like that just in order to stay in an affordable home.

With vacancy decontrol and some of the other provisions, we feel students are put more at risk of being harassed and intimidated by landlords, who may be anxious to get rid of low-income tenants or who they may perceive as undesirable tenants in order to free up the apartment, raise the rent or perhaps demolish it in order to put up a condo or some kind of higher-income accommodation. We believe students in particular are at risk for this type of treatment.

While we are very happy that the government is proposing to enhance the anti-harassment legislation and the amount of settlements that are available, we don't think this is ultimately going to help students who do not have the time or energy to be able to go through a dispute resolution procedure or bring legal action against a landlord who's treating them unfairly. Often students will not know they have those mechanisms available to them.

We're also concerned about the potential elimination of the Rental Housing Protection Act. We believe that while this may provide incentives for the creation of new rental accommodation, it's not going to be the type of rental accommodation students will be able to access. We would like to see other ways of looking at this. We want to see the amount of affordable rental housing protected rather than things opened up because we think ultimately this is just going to benefit landlords more than it will low-income tenants.

Finally — and I know I'm going over things quite quickly, but you do have the brief in front of you — we have identified a number of areas which the New Directions documents does not address and we would like to

see the government address. One is, first of all, the creation of affordable rental housing. Second is the lack of regulation on quasi-legal and illegal basement suites. Students in particular often find themselves looking for the most affordable accommodation possible and will take a basement suite which is not regulated and therefore they have no protection. We'd like to see the government take a look at these types of apartments and look at perhaps bringing in some regulations so that there are minimum standards that need to be met by these types of suites.

We also feel that the document does not address shared rental accommodation, which is a very popular form of accommodation for students. They often, to keep their rents down, pool together and share apartments or houses. There isn't really a lot of talk in the document about how shared rental accommodation works with vacancy decontrol and we'd like to see some more details about that.

Finally, we really feel very strongly that the government needs to take a look at dissemination of information about landlord-tenant legislation and tenants' rights. We would like to see the government bring in some provisions that would require a tenant to receive a copy of landlord-tenant legislation with every lease that is signed, something like that, so that students and other tenants will know their rights right away and therefore will be able to take advantage of dispute resolution mechanisms and be able to resolve any problems with harassment that might come up.

I think I'll leave it at that and open the floor up to questions.

1350

Mr Marchese: Thank you, Ms Smallman, for your presentation. I just want to make a few comments on what you said because I think they're important. First of all, in terms of vacancy decontrol, 99.9999% of the population doesn't have a clue what that means, so we need to tell them. What it means is that when you leave your apartment, the landlord can raise the rents again. That's really what it means; nice and simple so that we don't confuse the public about these words that don't mean much to them — except in reality, what it means is they're going to get an increase.

Secondly, you brought up an important point about students which needs to be reiterated often, and that is that they move often, possibly every year. If that's the case, they will be hit particularly with an increase in their rents. We know about tuition fees. We've done it and they've added yet another 20% or so. It compounds the problem even more.

This is something students need to become aware of because it will hit them in their pocket. My daughter is going to first-year university and she'll be paying \$4,000 in tuition fees. It's really hard, and this compounds their economic problems even more. I'm not sure whether some of those fine members there realize that, but they should.

One of the points you mention is that students may not be aware of their rights. That's not unusual, because a lot of people aren't.

Ms Smallman: That's right.

Mr Marchese: In that boat we have a lot of immigrants as well. As you were talking about students, I was thinking about immigrants coming into the country, and generally they don't buy houses because they don't have the money. Where do they go? Into rental accommodations. If there's a problem, who protects them?

The legal clinics have been almost defunded. United Tenants of Ontario doesn't get any more money to help tenants, so who supports them? But you shouldn't worry, because Monsieur Leach and the other fine members on the other side say this is a package to protect tenants, so everything will be okay. Even though you have problems, don't worry; they say everything will be all right. Do you feel all right?

Ms Smallman: No, we don't, actually. We're quite worried. I know that I'm worried about my own rent and as a graduate student with a fairly substantial debt load, I don't feel that I have a lot of protection. I think your points are very well taken, that students are being hit from all sides with a number of problems, and I don't see a lot of protection for tenants of any kind in here. I particularly don't see protection for students, the type of transitory tenants, and "inexperienced tenants" is probably the best way of putting it.

I would like to see the ministry actually look at the word "protection" and look at whom this document actually protects. I think it protects the landlords and it provides incentives to landlords to further harass low-income tenants, and in particular students.

Mr Tilson: I think the difficulties of getting accommodation in university towns have gone on for eons and students have complained about it. At the same time, landlords have complained about the difficulties that students cause in certain accommodation. Mr Marchese and I do have one thing in common, and that's a child who's going to university.

Ms Churley: And that's it.

Mr Tilson: That's probably about it, yes. I think it ends there.

The question I have is really twofold. What can be done to encourage rental accommodation in university towns around this province? What could this government do to encourage rental accommodation? Finally, you've expressed some of the concerns of students, but what assistance could be given to landlords? Because landlords are discouraged from forming rental accommodation because of the improper actions of many students.

Mr Ashkan Hashemi: As far as incentives for building housing are concerned, we don't have any grand schemes of how to build housing for students. What we do know is that some of the stuff that's gone on before this has actually killed most of the affordable housing that was being built in this province. I'm talking about getting rid of co-op housing and things like that. Bringing that back would certainly be a good start.

Business itself has suggested some means, outside of vacancy decontrol, for doing that. Vacancy decontrol is actually a very small part of building new affordable rental housing; it's got very little to do with it. There are a whole bunch of other provisions that I think the Lampert report addresses in some cases that need to be looked at, separate from the proposals in this one. Those

were ignored. Things that would not affect tenants seem to have been ignored, whereas things that directly impinge on tenants' ability to pay for their suites seem to have been put forward in this brief. So those are some of our concerns around creating new affordable rental housing.

As far as addressing the question of landlords and student tenants is concerned, I think a lot of the misconceptions around student tenants are precisely that, they're misconceptions, they're stereotypes. A few problem tenants do not make an entire population. Student renters are a huge population and there's no problem for most of them. There already are procedures in place to deal with problem tenants, and that seems to have worked so far. Because of a few bad apples, you can't —

The Chair: Thank you very much, Mr Tilson. Mr Curling.

Mr Curling: Thank you for your excellent presentation. It's an area that has not been addressed properly. I was trying to look through the submission made by the legal clinic. They had made a comment, it was an excellent comment, that when we try to deal with rent control as an isolated economic issue causing entirely all the problems happening in the rental market, then we get rather concerned.

I don't know if you have done any studies or if you have any figures to see what the costs have been to students in the last, let's say, two years that make it more inaccessible to be a viable student; in other words, tuition fees, user fees, now you're going to have increased rent. Is there any figure that you have that you could share with us?

Ms Smallman: Certainly. We don't have our fact sheets with us today, but I'd be happy to forward any documentation to the committee. In terms of just the tuition increases, this coming year it's 20% for university students and 15% for college students. Before that, over the last 10 years tuition has doubled. So it's doubled and then add another 20% on top of that. That's tuition alone.

Mr Curling: That's right, plus you haven't touched on the increased rents.

Ms Smallman: That's right. I don't think we have any documentation in terms of the amount of rent that students are paying. You can't come up with it; there are so many different communities in so many different types of towns.

Mr Curling: My colleagues on the Conservative side get very uneasy when I speak, because they feel I'm coming from an empty point of view. I spent four years at Seneca College doing housing, and I know the concerns of students and the cost to parents and to students, and the fact of an inadequate era for getting summer jobs has also added to that.

Ms Smallman: You can look at the youth employment figures for this summer and you can pretty much assume that students have not been able to make the kind of money they're going to need to make to cover their costs for the upcoming year, which means an increasing reliance on the Ontario student assistance program and probably eventually some forcing of students to drop out.

Mr Curling: I just wish the minister was here to hear this.

Mr Sergio: I have one question, a quick one, Ms Smallman. It was suggested that perhaps universities should provide more housing for their students. With all the cuts that universities have received, and probably they'll get some more, do you think they are in a situation where they can afford to build more student residences?

Ms Smallman: Certainly not. In fact, they can't afford to maintain the residences they have, much less build new housing. Many universities in the past have taken on working with the government to build subsidized housing, but this is no longer on the agenda for the government, so this is not an option for universities any more. In terms of building a new building, that requires massive funds. Universities are just trying to keep their heads above water right now. They can't afford it.

The Chair: Thank you, folks. We appreciate your being here this afternoon and your presentation.

1400

ONTARIO COALITION OF SENIOR CITIZENS' ORGANIZATIONS

The Chair: The next presenter is Martha Dallaire, a member of the Ontario Coalition of Senior Citizens' Organizations. Good afternoon. Welcome to our committee.

Ms Martha Dallaire: My name is Martha Dallaire, and with me is Maurice Jession, the executive director of the Ontario Coalition of Senior Citizens' Organizations.

The Ontario Coalition of Senior Citizens' Organizations, or OCSCO, is a coalition of over 80 seniors' groups from across Ontario representing the concerns of over 500,000 senior citizens. OCSCO unites both large and small groups from community, union, women's, ethnic, native and veterans' organizations on matters affecting the quality of life for the senior citizens' community.

I am a senior and a tenant, and I will be directly affected by the changes the Harris government is proposing. I am very much afraid of how these changes will affect me, my friends and other seniors. On behalf of OCSCO, I am here to present our response to New Directions and our concerns about the negative impact of these changes to seniors and Ontario's housing options as a whole.

When the province killed co-operative and non-profit housing programs in Ontario, it also removed a housing option that thousands of seniors relied upon each year to supply new affordable housing. This and the proposals in New Directions are of grave concern to the seniors' community in Ontario. Except for developing high-end, single-family dwellings and condos throughout Ontario, our government has been slowly eating away at housing policies to the point where there is no housing policy in the province of Ontario. OCSCO believes that housing policy must have a larger vision and social purpose than is currently the trend among governments. Our government has a responsibility to maintain and develop a comprehensive housing strategy which fulfils the needs of all Ontario's citizens.

The majority of seniors believe that aging in place is the preferred way to live their life. The Ontario government is, however, taking that goal away from them by looking at ways to change the protections given to tenants through the Landlord and Tenant Act, the Rent Control Act, the Residents' Rights Act and the Rental Housing Protection Act. Seniors are very much afraid that without these protections there will be huge rent increases that seniors simply can't afford. We are afraid that landlords will now do everything within their power to kick us out of our buildings so that they can charge more rent to new tenants. If the rental housing stock that so many of us depend on is depleted, where will seniors who rent go to live? How will vulnerable care home residents protect themselves?

New Directions proposes strong tenant protection by giving a landlord the ability to increase an incoming tenant's rent without regulatory restriction. Instead, vacancy decontrol will eliminate tenant protection from arbitrarily high rent increases for all tenants who move. Our discussion must focus on the impact of these changes to low-income tenants. Low-income seniors are at risk of losing affordable housing here in the province of Ontario.

The original intent of the Rent Control Act was to protect vulnerable tenants at the low end of the rental market; that is, it protects people who cannot afford high rents and who cannot afford to buy property. As an independent body, the rent registry has helped tenants determine if their rent was legal and to challenge unscrupulous landlords by legal action. Many seniors live alone and in poverty. Hence, these protections are especially important for seniors because we live on a fixed income, we cannot afford huge increases in living expenses and we are unable to compete for rental units when vacancy rates are low.

Under the proposed changes, as soon as a tenant needs or chooses to move, we will experience a rental market fraught with arbitrary rents regardless of the quality of housing. Among seniors who move we can expect more poverty, ill health and social isolation. Many seniors have reported to us that they are now afraid to move, because if they do they will be forced to choose paying higher rents over food, medication and transportation. Therefore, OCSCO is against any form of vacancy decontrol and recommends that the government maintain tenant protections under the current rent control system.

These concerns bring me to my second point: Does the government actually believe that the proposed negotiation procedures between landlords and new tenants will take place in a fair manner between two equal parties? Landlords and tenants do not have equal power. People need housing and landlords have more than their fair share of tenants who need to rent. During the proposed negotiation process, low-income seniors will be easily outbid by other tenants who can afford a higher rent for a unit. Even being outbid by \$30 a month may be the difference, for a senior, between eating and paying for necessary medications and having a home to live in.

Also, the reality is that most tenants do not know their landlords personally and only have a relationship with a superintendent. This means that landlords and seniors meeting to discuss new rent increases or volunteer

renovations, which most seniors cannot afford, is highly unrealistic.

With respect to capping capital expenditure increases, I would like to stress that such caps are also essential to protect tenants from arbitrary rent increases during their tenancy. We are worried that allowing landlords to increase rent limits on capital repairs will be too much for low-income seniors to bear. Also, if the costs no longer borne provision is removed from the Rent Control Act, seniors will be forced to pay for the repairs forever, even when the landlord no longer has to pay this cost. Finally, you must preserve tenants' rights to make a rent reduction application at any time. We should have the right to a rent reduction application for inadequate maintenance, reduced or withdrawn services and operating cost decreases for municipal taxes and for reduction in the landlord's cost of heat, hydro and water.

Seniors do not believe that the government's proposals will necessarily induce landlords to put money into building maintenance. There is no requirement in the proposal that the higher rents negotiated will be attached to improve building maintenance. Even if landlords and tenants settle on a higher rent based on repairs and improved maintenance, this system may result in new investment in the building. However, it will also result in the economic eviction of seniors as low-income tenants who cannot afford higher rents are forced out of their homes. This will force many seniors into low-cost, inaccessible housing with the worst health and safety conditions.

OCSCO supports increased fines and possible imprisonment for property standard violations. However, it is our belief that many seniors do not report property standard violations. Seniors are afraid of landlord harassment and many do not know their rights as tenants. These fears will become much worse if rent deregulation happens.

Harassment reports will depend on tenants taking action against a landlord. We know that vulnerable seniors will still not challenge their landlords for fear of losing their housing. Hence, for the municipal property standard offices and the proposed anti-harassment system to work effectively, the government must commit a great deal of financial and structural resources to the new systems. Most importantly, OCSCO recommends more money and support for tenant rights education, without which vulnerable tenants cannot effectively protect themselves from unscrupulous landlords.

OCSCO is satisfied that fundamental tenant protections under the Landlord and Tenant Act will remain unchanged. However, the government is proposing to take Landlord and Tenant Act disputes out of the courts and have the issues settled by a quasi-judicial tribunal. Under any new system it is essential that the decision-makers are knowledgeable and neutral in landlord and tenant issues. You must also ensure the decision-makers are not political appointments made by the government of the day.

The government is also considering charging application fees for addressing landlord and tenant disputes. A user fee system to protect your rights is unjust for all tenants, and such fees, no matter how small, will prevent

low-income seniors from bringing legitimate concerns to court. Therefore, OCSCO is against any form of user fees for the resolution of landlord and tenant disputes.

OCSCO does not agree that changing the conditions for conversion, demolition and renovations of rental housing will protect tenants. The Rental Housing Protection Act already protects the tenant by preserving the province's rental housing stock. This ensures that developers cannot arbitrarily convert apartments to condos, which low- and moderate-income tenants cannot afford to buy. Does the government not realize that if tenants could afford to buy houses or condos, many would already have done so? After all, the current supply of high-end condos is very high and readily available for purchase. However, seniors who live on a month-by-month pension cannot afford to buy property.

Changes to the Rental Housing Protection Act will mean that current rental housing will be lost through demolitions to other uses or conversions to condos. Rather than help tenants, these changes will result in an increase in unaffordable housing units and fewer housing options for seniors and all tenants.

1410

To avoid tenant hardship, the government proposes giving sitting tenants the right of first refusal to purchase their units in the case of conversion and extended tenure for existing tenants. As I've already stated, these proposals will not protect those seniors who cannot afford to buy property. Seniors will be forced out of their homes as the province's rental housing stock is depleted through demolition and conversion. Hence OCSCO strongly urges that the Rental Housing Protection Act remain in effect as written. Your government has a responsibility to protect low-income seniors and tenants who depend heavily on the province's rental stock for their housing.

Tenants of care homes have security of tenure under the Landlord and Tenant Act, the Rent Control Act and the Rental Housing Protection Act, just as any other tenant in Ontario. OCSCO is very concerned that vacancy decontrol will result in arbitrary and unaffordable rent increases for new tenants in care homes. Conversions or demolitions of care homes will result in the loss of affordable housing for special-needs tenants as a whole. Seniors and other adults with special care needs will be devastated by the impact of these changes.

New Directions will also allow care home operators to transfer tenants to alternative facilities when the level of care needs change, subject to certain protections. It is not clear to us, however, what these protections are. We believe the only acceptable tenant protection from arbitrarily being transferred to an alternative facility is the consent of the tenant. The Health Care Consent Act currently requires a person to consent to admission to a care facility. OCSCO recommends that the protections of the Health Care Consent Act remain in place for care home residents.

With respect to fast-track evictions for care home residents, OCSCO believes that care home tenants should not be subject to eviction procedures different from any other tenant in the province, especially since there is no evidence that tenants living in care homes are any more likely to threaten other tenants. A fast-track eviction will

create a loophole for landlords who wish to arbitrarily evict seniors and other vulnerable adults living in care homes. All tenants deserve security of tenure. Thus, OCSCO is against a fast-track eviction clause for care home tenants who pose a threat to other tenants.

In New Directions, this government admits that tenants in some of our larger cities have little choice in where they live. Your consultation paper should have stated that low-income tenants and seniors have little choice in where they live. This government must acknowledge that income, housing availability and housing affordability are major determinants of people's health and choice of housing. Where there is a lack of affordable housing, low-income people are forced to live in substandard housing.

The Landlord and Tenant Act, the Rent Control Act and the Rental Housing Protection Act exist to protect tenants and to provide diverse housing options for Ontario's citizens. Seniors are especially dependent on these protections. We have spoken to many seniors who now live in fear that this government is turning its back on the people of this province. Therefore, OCSCO urges the government of Ontario to seriously consider the social impact on Ontario's citizens before any amendments are made to the original statutes protecting tenants' rights.

Thank you very much for the opportunity to present our concerns and our recommendations to you today.

Mrs Lillian Ross (Hamilton West): Good afternoon. Thank you very much for your presentation. Do you have any statistics on seniors and how often they move out of their accommodation?

Mr Maurice Jession: No, we don't.

Mrs Ross: It's been my experience from talking to seniors who have called me when they heard about this legislation coming out that most of them move into an apartment and they don't want to move out. They prefer to stay where they are. Do you not feel this protection act protects them because they will not have to face high rents?

Ms Dallaire: I think there is an element there of seniors feeling they will be trapped in that kind of accommodation and they won't be able to move because if they do, they'll have to move into an accommodation which they won't be able to afford. Also, I don't know if it's a function of our age or what, but I guess it's a matter of one likes to have a modicum of comfort in one's old age, and comfort is often what one is familiar with.

Mrs Ross: Right, exactly. Under the current rent control as it is now, seniors have faced rent increases over the last number of years, have they not?

Ms Dallaire: Yes.

Mrs Ross: How do you feel it protected them when they still had rent increases? Even when inflation was very low, they faced rent increases. Can you explain that to me, how rent control protected them against rent increases?

Ms Dallaire: I think because the rent control was established to be a certain amount and was, as I recall, a very reasonable amount every year that was possible. I think their fear is that with the changes it could be anything. If the landlord decides to do major changes, they could be faced with 10%, 20% or 30% increases.

Mr Sergio: Ms Dallaire, thank you very much for your presentation. It shows you are well familiar with the intended legislation. I'm looking at the summary of your presentation here and I have to say that none of what you're recommending is being incorporated in the proposed legislation, unfortunately.

There is a three- or four-year waiting period for housing accommodation within Ontario Housing or the affordable housing of the province. Knowing how sensitive the issue is with seniors' accommodation and since there is no such thing any more as accommodation based on needs, other than, "Come in and make your application today and we'll take it from here," how does this affect the mentality of the seniors out there, the peace and quiet, the enjoyment of their own place and future consideration if they should, because of a number of reasons, move? How does this affect seniors?

Ms Dallaire: They're terrified. It's as simple as that. They call us, they speak to us, and they say they are terrified. They want to know what it means to them. They are totally confused about what it actually means because they don't feel they have had sufficient information. They're scared. What can I say?

Mr Sergio: Just quickly, Ms Dallaire, a large number of them, a large percentage, are on government assistance. They have already received a 21.6% decrease in their payments. How would they cope if they had to move and face a possible rent increase on another place?

Ms Dallaire: I don't know.

Mr Sergio: They don't have an answer.

Ms Churley: Thank you for your presentation. It summed up very well many of the same problems that our party sees with this new legislation. You state on your first page something that I would totally agree with and would hope that this government comes to see after a few weeks of these hearings: that you believe the housing policy must have a larger vision and social purpose than what is currently the trend among governments.

Our party sees housing as a right. It's something that's absolutely essential to our wellbeing, and therefore not something you can just throw open to the whims of the marketplace. Unfortunately, that's what this legislation is doing, and your document points out the pitfalls with that.

I would suggest that you go to see Mr Cam Jackson soon. He is the government's new minister without portfolio for seniors. I would point out to him that one of the very first gestures he could make as this new minister responsible for seniors — the spin doctors want him out there to say, "We care, we care," because they sense a vulnerability there — is to say, "If you really care, go back to Mr Harris and say, 'This new tenant act is going to hurt vulnerable seniors.'" That, on top of the new user fees on drugs and a host of other user fees that we see coming with privatization, is really going to hurt seniors. We don't want just window-dressing, Mr Jackson, we want action, and symbolize it here. This is your chance.

The Chair: Thank you very much, Ms Churley.

Ms Churley: Sorry I didn't get to my question.

The Chair: Thank you very much for your presentation. We appreciate your interest in the process.

1420

TORONTO CHRISTIAN RESOURCE CENTRE

The Chair: The next presenters are from the Toronto Christian Resource Centre, Carmel Hili and Julie Haubrich. Welcome to our committee hearings.

Mr Carmel Hili: Dear committee members, my name is Carmel Hili and this is my colleague Julie Haubrich. We come from the Toronto Christian Resource Centre. Our submission falls into two parts. First we will address a matter that arises directly out of our work of providing housing for low-income individuals in shared accommodation. Secondly, we will deal with several other parts of the proposed legislation.

We have a message to give to you, and this message is based on 20 years of providing shared accommodation to low-income singles in Toronto. Our organization operates 35 houses. About five men and/or women live in each one of them. They have their own personal rooms; however, they share bathrooms, living room, kitchen and basement.

You may all have experienced living temporarily in a rooming house during your student years. Many single people have to live in these housing types for most of their lives because they cannot afford anything better. The wellbeing of the tenants in these communities depends on each individual living in it. If one of these tenants decides to deal or use drugs, invite a gang to move in to use drugs, party in the late hours of the night, turn the TV up loud at night, play metal music for the next-door neighbour to hear, clutter the basement with junk, or turn his or her room into a flophouse, then everyone is affected and the house will become very unsafe.

We believe the Landlord and Tenant Act in its present form works well in self-contained units. In the matter of shared accommodation in situations where one tenant is substantially interfering with the enjoyment of premises of the other tenants, clause 107(1)(c), it needs some fine-tuning. At the present time, the Landlord and Tenant Act does not protect tenants in shared accommodation adequately. Please note that we are referring only to tenants living in shared accommodation and in situations where one tenant's behaviour is posing a danger to the safety and enjoyment of the other four or five who live with him or her.

This concern comes out of our experience; it's based on it. We are down in the trenches, providing housing daily to low-income singles, managing 35 houses with more than 180 tenants living in them. Under the present legislation it takes generally more than two months to terminate the tenancy of someone living in shared accommodation who may be terrorizing the other tenants. We feel this is no protection to the other five or six who are residing in the same house. In the two months it takes to get the culprit tenant out, violence, danger from fire, use of firearms, assault on one's person or heavy beatings can erupt at any time. These victim tenants are left to their own resources and many prefer to leave their home. Some go back to the streets rather than suffer physically and mentally through such circumstances.

We recommend that the eviction legal process in shared accommodation when the basis for eviction is for serious misbehaviour be speeded up. We want due process. Tenant advocates state that it takes about a month and a half to evict someone. Our experience tells us it is more like two and a half months and upward. In one case it took us a year, during which time one person died and the others left and the tenant in breach was left alone in the house. For tenants sharing intimately a home with a renegade tenant, two months or more are like an eternity.

The speeded-up process is warranted because of the type of housing, shared as against self-contained apartments, and not because of the social or economic background of the tenants in shared accommodation. The government's proposal has already recognized the principle of speeded-up process in care homes, which are also shared accommodation.

We recommend that shared accommodation receive a new paragraph by itself in the legislation where tenants' rights in rooming houses, care homes and boarding homes are affirmed; that is, where these tenants' rights in these places are affirmed and where the legal process of eviction due to misbehaviour only, according to the LTA, is laid out on a speeded-up basis.

Rather than suspend a tenant's right to his tenancy or devise ways of sidestepping due process, as is recommended in some quarters, we recommend that in the matter of clauses 107(1)(b), (c) and (d), where one tenant is substantially interfering with the enjoyment of the premises by the other tenants or doing unlawful acts or endangering other tenants' wellbeing, the legal process could be hastened in this manner:

Step 1: That subsection 107(1) be changed to read that, "The landlord may serve on the tenants a notice of termination of tenancy agreement to be effective not earlier than the fifth day" — instead of the 20th day — "after notice is given, specifying the act or acts complained of and requiring within one day" — instead of seven days, as it is currently — "to cease and desist from activities in clauses (b), (c) and (d)."

Step 2: That in subsection 107(4) the last four lines be amended to read that "the landlord may serve on the tenant notice of termination agreement to be effective not earlier than the seventh day" — and not the 14th day — "after the notice is given."

Step 3: That cases dealing with behavioural problems in shared accommodation, such as those referred to in clauses 107(1)(b), (c) and (d), be heard immediately by a judge, bypassing the deputy registrar of the court or any tribunal.

Step 4: That in the matter of evictions for breaches under clauses 107(1)(b), (c) and (d) from shared accommodation, due to the nature of the housing and because of the immediate danger many tenants are exposed to, the obtaining of the writ of possession and the executing of the writ by the sheriff be given priority and carried out within five working days.

These changes might bring a cluster of cases on the court's doorstep at the beginning. Once these initial cases have been dealt with, however, there will be a quick adjustment. There would be no extra time, no extra work,

but more prompt court decisions and executions. If you implement these changes, you will be affirming the rights of tenants in boarding homes and care homes and rooming houses, you will retain due legal process, and finally, residents in rooming houses and boarding homes and care homes will feel safer and grateful to you.

We want now to address the changes contemplated regarding rent control, the Rental Housing Protection Act and the Landlord and Tenant Act.

Rent control: The new Rent Control Act will have an annual guideline and limits set by the government only for sitting tenants. There are no rent controls for new tenants. When a unit becomes vacant, the landlord can raise the rent as much as he or she wants.

The main reason for changing the law is because in its present form it discourages capital investment. It has been shown in other jurisdictions that the removal of rent controls does not make developers invest. In British Columbia, rent controls were removed in 1983 when the minister responsible for housing stated, "These deregulatory measures will ultimately result in new real estate development, more jobs and a continuing healthy availability of rental accommodation." However, today British Columbia has the lowest vacancy rate and the highest rents in Canada. There has been no boom of new housing. Rents went up and the down-filtering forecasted did not happen. Why do we insist on making others' mistakes?

In the government's proposed legislation there is a real heart-bleeding plea for balancing the law so that landlords can make more money and will be more motivated to keep the buildings in good repair. Yet interestingly enough, the Russell Canadian Property Index, a highly respected gauge of investment activity, states that Ontario's apartment sector has delivered a 10% annual return on investment over the past 10 years, outpacing all other sectors, including retail, industrial, office and mixed use.

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For tenants, the proposed legislation is devastating. Clearly the government is siding with landlords. As a result, there will be high rents charged new tenants, harassment of tenants and pressure put on them to move, tenants not being able to move at great inconvenience to themselves because of high new rents and a pressure cooker rental market with a zero vacancy rate.

We consider that the proposed law will be unfair and unjust and will punish tenants financially and socially.

The Rental Housing Protection Act: The power that municipalities have pursuant to the Rental Housing Protection Act to prevent demolition or conversions of affordable housing will disappear. The reason given by the government for doing away with this act is that building owners cannot improve the quality of their buildings or make better use of the land under them.

Owners will now be able to sell buildings arbitrarily to the highest bidder or convert them to condominiums. This is a great piece of legislation for them. What do tenants get from the phasing out of the act? According to the government, tenants can buy the apartments. Yet the government knows that home ownership for most tenants is not an option. What tenants get is housing being sold

from under them and a shrinking base of housing units as owners convert affordable housing to condos or other use, or demolish functional low-cost housing. How more one-sided can a law be? This is a formula for a housing disaster in the province.

I have managed a rooming house on Bleecker Street since 1982. The landlord wanted to tear it down to make room for a parking lot. The city prohibited him from doing this. As a result, 20 low-income tenants have had long-term housing in it. Most of them came from the streets and the hostels. If the RHPA were not in place, all of them would have ended back there. Piles of money for a parking lot owner on the one hand and 20 low-income tenants decently housed on the other; what is the government choosing with this law?

Ms Julie Haubrich: I'd like to pick up on the point my colleague Carmel Hili has made about tenants being left wide open to potential harassment by landlords who wish to make more money. This threat of harassment is real, especially if it means increased revenues for landlords. I have talked with numerous tenants who have been and are being harassed by landlords. The subtle and the simple things are often the most harassing: the slowdown on the repairs to units, in the hallways and in the elevators; no hot water at irregular intervals; slow, inadequate or no response to their complaints.

In the new legislation there is an obvious recognition that harassment may be a problem, as an enforcement unit will be established to investigate tenant complaints and fines for landlord harassment have been increased. These appear to be very positive measures, but I have great fears about their effectiveness unless they have teeth, and that means they will need to be well funded. With a government that has cut its budget so drastically, I fear for the tenants in the private market. They're like sitting ducks.

I also fear that I soon will be living in a society where poorer folks and people on fixed incomes either will be living in horrible and harassing conditions or may end up moving out and finding it impossible to find suitable and affordable accommodation.

When I was a student I moved often. In 13 years I moved 27 times. I took any job that I could to help me pay for my schooling and took accommodation that was close to those places of work, so I had to move often to take those jobs. If we lose rent controls, students and yes, let's face it, all of us will have to think twice before we give notice to a unit that we're living in to take a job that may offer only a couple of hundred dollars more a month.

We talk about developing a mobile and flexible workforce, but if people have to calculate huge differences in their rent, many jobs will have to be turned down or else commuting time may end up being two to four hours a day. As a person who's concerned about their environment, as someone who cycles, I can't handle any more cars on the road polluting the air, so this just seems crazy.

This is particularly crazy-making for individuals on social assistance. On one hand, they're deprived of adequate funds to look for work — there's not enough money to get proper clothes, TTC, or even pay for

résumés, but they do that and they don't eat — but if they happen to find a job and they have to relocate to get that job, they may be unable to find affordable housing, especially if it's only a minimum wage job they have an option of taking. This government wants people off assistance yet it blocks every door. It seems like we're clipping every wing.

We know now that there's not enough affordable housing. With these changes to rent control, in four to five years we'll lose most of all the units affordable to low- and fixed-income people who are in the private market. I say this because, on average, about 25% of the population moves every year. This will put more pressure on governments of the future to build more affordable and subsidized housing for low- and fixed-income people. As a taxpayer, I don't see this as good planning for the future.

I see that in this new legislation there's also talk of a "faster, more accessible system to resolve disputes between landlords and tenants" and an "improved enforcement of property maintenance standards." Both these measures have potential to be beneficial for the community I work with, the low-income community, but only if they're adequately funded.

If these tribunals are not properly staffed, made accessible to people with diverse and other special needs, and given legal counsel, they will be nothing more than a place for landlords to get eviction papers stamped. If all the issues that arise between landlords and tenants are dealt with in one place and that place is not adequately staffed to meet the workload, I fear that no one's needs will be met. The end result will be longer waits for both landlord and tenant.

We thank you for the opportunity to address you about these concerns of great importance; however, we regret that many other people and groups could not have had the same opportunity. In spite of indicating early on that they wanted to address the committee, they were not assigned a time to do this because of lack of time. This proposed legislation touches the lives of many people and we ask you to give them a chance to express their feelings and anxieties. Extending the hearings would be a reasonable option.

We now are available for any questions you may have.

Mr Kennedy: Thank you for your presentation. There are a number of really strong points that were made that we haven't heard before. I wonder if I could ask you, though, just to elaborate a little bit because of your specialized and long-term involvement with vulnerable people and what you think the prospects are going to be for them to access new harassment mechanisms, for their ability to find other places in the marketplace and what their current situation is. I don't think people recognize how much some people are already devoting to the cost of shelter.

Mr Hili: Single, displaced people are already encountering barriers as it is, and that was before the cuts. With the cuts, it's going to be even more difficult for them. They cannot compete any more to get rooms because there are people who are being bounced from further up coming down, and they are competing with them for rooms. Getting a room in a rooming house is indeed

going to be a very difficult thing for people living on the streets.

Mr Marchese: One quick comment and then a quick question: First, I want to admit that in the area of shared accommodation there are problems, there were problems and there will be problems. That's one area I think could use some attention in terms of how we fix that. I wanted to agree with that.

This government doesn't believe in the role of government as it relates to housing. They say they should be out of the housing business. They argue, "Let the marketplace take care of these things." What do you think the role of government should be in this area?

Mr Hili: Housing is not a business. Social housing is a sacred trust that the government undertakes. The government doesn't go into housing to make money like a business does, so it's important that government be involved in housing because the market is not delivering. The market will not deliver in a situation like Metropolitan Toronto, where the average household is making only about \$33,000. From studies and research done, the market would not be building apartments for people making as little money as that.

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Mr Maves: Thank you very much for your presentation. I was interested in your first section when you talked about, in your scenario, rooming houses, how you want the power to evict more quickly to stop one person harassing the other people, scaring them and so on. Yet then you quickly turned and, in other non-rooming-house units, you just characterized landlords asking tenants to leave as harassment. You seemed to accept that there were bad tenants in one case and not in the other. Could you just explain? It was an apparent contradiction. You were anxious to get stepped-up eviction for bad tenants in one case, but not in others.

Mr Hili: There is a due process that the landlord can use. If the landlord feels a tenant is not carrying out his or her duties, paying rent, then there is due process in apartment buildings as you share accommodation.

In shared accommodation the thing that stands out is that people are very intimately close to each other. They share rooms, not apartments. They share the same bathroom and living room and they bump into each other every day.

Mr Maves: I have an apartment in Parkdale and I hear everybody all the time.

The Chair: Thank you very much, folks. We appreciate your attendance here this afternoon. Just to let you know, anybody who did not have an opportunity to come and present live to the committee, we would be more than happy to accept a written submission from them. As the Chairperson, I will make sure everyone has an opportunity to read that.

METROPOLITAN TORONTO APARTMENT BUILDERS' ASSOCIATION

The Chair: The next group is the Metropolitan Toronto Apartment Builders' Association, represented by Richard Lyall, the general manager, and John Bassel. Good afternoon, gentlemen.

Mr John Bassel: I'm going to try to be as brief as I can. You have a written presentation in front of you. I don't intend to read the whole thing, but I want to just tell you that I've been in the housing industry for 42 years. I think I'm reasonably well known and I think I know a lot about the housing industry. With me is Richard Lyall, the executive director of the MTABA.

The next two paragraphs describe the activities of the MTABA and I do not intend to review that. You can read it at your leisure. Needless to say, it's a very important organization which really represents all of the people who build high-rise, multi-family accommodation. It's a deceptively complex industry, with probably a higher degree of government involvement than any other industry sector, partly because of social policy, which borders on the industry.

We've received international recognition for our forward thinking in the building of multi-family housing; in fact, the systems that were developed in Toronto are now used worldwide. However, locally we've been blunted. Our activities have been blunted, partly because of political objectives and partly because of social policy.

This is one of the reasons why we see changes to the rent control system as one of the steps necessary to restore a balanced housing market and ensure adequate housing supply and maintenance. If this process that's ongoing now results in meaningful change, then it will be a good thing for the province.

Given the complexity of the industry and market, we believe the rent regulation issue cannot and should not be examined in isolation any more. In the course of these hearings, you're going to hear from some other industry associations that will elaborate on what I'm saying here. All I can say is that we're facing a housing crisis, particularly in the Metropolitan Toronto area and other parts of Ontario, and if we don't deal with it we're going to be in really bad trouble.

As you know, private sector rental apartments are not part of what's going on today and they're not part of what's been going on for a long time. In fact, the building of private sector rental housing may be an anachronism and I may be an anachronism, although I hope not, because I'm one of the few people still active in the industry who built private sector rental housing unsubsidized and went out in the market and made it happen. We'd like the opportunity to let that happen again.

Now with the passing of the era of massive government intervention in housing development, the association's greatest challenge is directed at efforts to restore the apartment industry. When I say "apartment industry" I'm talking about private sector rental housing. First, it must be done to restore a balanced market, which is necessary given that everything else has been tried; second, because we have no other choice. Finally, controls have been falling all over North America, with New York City and Ontario being the only significant housing markets which effectively exclude private sector rental investment. In my opinion, this is not a sterling example to be followed and we shouldn't be following it any more.

It should be noted that in its heyday, the apartment building industry around these parts produced as many as

30,000 and 40,000 units annually. All of these units are presently occupied.

The effect of long-term intervention has not only been crippling private sector investment and distorting the market, especially in GTA, it has left us with deteriorating rental housing stock and many overcrowded buildings. Also, it is the primary reason why various governments of the day were forced into building so much non-profit housing, at a cost of between \$1,000 and \$1,500 a month per unit for the foreseeable future, 30 or 40 years, for each and every unit so built.

I'd also like to say that the so-called market segment of these buildings was not really market rent segment; it was the suppressed rent level of the private sector market, so even those units which were purportedly market rents were really not. They were subsidized probably to the extent of \$600 to \$800 a month each as well.

Successive governments have failed in meeting the social policy objective of ensuring a balanced and adequate supply of housing. While tenants are seemingly well represented, no one group outside of the industry represents prospective tenants, people who have no place to live and really need a place to live.

Last summer when the new government announced its intention to change the system, including the withdrawal from social housing, we advised that it do so gradually and make sufficient and timely changes to get the private rental market industry working. I just want to elaborate on that a little bit. It takes 15 to 25 months at least, from a standing start, to build an apartment building, and that's if everything goes well for you. So the minute the program was ended, all of a sudden a vacuum was created, and as we sit here today, the solution to the vacuum has not yet come. We must find that solution, because we're now a year down the road with a need for 15,000 to 20,000 units, and each year that need will be at least the same amount, regardless of what anybody says.

We've also provided our comments to Greg Lampert, who wrote the paper for the provincial government on the barriers to investment in private rental housing. That document is probably well known to you, and if it's not, it will be by the end of these hearings.

In the report the rent control system was identified as one of the major barriers, not the only one. The report was also careful to note that many other major changes would be necessary. The economic bottom line is that right now we can't build a rental housing unit to rent at market rents because market rents are a couple of hundred dollars or more a month less today, because of certain things that need to be changed, than they might otherwise be.

We demonstrated the potential enormous economic benefits and tax revenues that would be derived from building apartments. Let's remember that every apartment unit that's built provides about two to two and a half person-years of employment. If you're going to build 15,000 units a year, you're going to provide about 40,000 permanent jobs annually.

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There are many entrenched obstacles and myths that have been created concerning rental development. One of the biggest is the assertion that the market cannot work.

They are correct only inasmuch as the current regulatory and tax environment cannot sustain the private rental industry. But let me assure you, the changes that are needed are not that many and I think they are doable. Given the fact that there's no other rental stock being built, we'd better find a way to do them.

Our industry benefited from the production of social housing because every unit of social housing that was built was primarily built by the multifamily housing industry. So the people who were doing that are now ready, willing and able to fill another role, which role must be filled for other reasons.

My greatest criticism about finding solutions to the housing problem is that there has been a dearth of ideas and solutions from any other concerned groups. Clearly, leaving the system the way it is, with minor modifications, is not the answer. Successive governments have proven themselves incapable, even through massive intervention, of replacing the market. Sadly, government has proven it can kill it; for example, the fact that no group has seriously challenged the Lampert report. It is only the Rental Housing Supply Alliance that has proposed solutions which do not involve massive government spending and direct intervention.

The whole situation reminds me of Gorbachev visiting the Ukrainian farmers in western Canada years ago as the Soviet agriculture minister. He picked up a handful of dirt and said: "Same soil, same people, same climate, same crop. It must be the system."

Therefore, I respectfully request that you ask other groups presenting how they would effectively meet the challenge of creating new housing supply. Challenge them to look beyond their narrow scope of interest.

We see the proposed rental changes as an indication that the government — and I hope I can use that term broadly — is seriously recognizing the need to address this difficult and not well-understood problem. To tackle a politically sensitive issue like this requires courage. The Rental Housing Supply Alliance will address this in its presentation.

I remind you that rental changes alone will not result in new construction. I hope I have made that abundantly clear.

With regard to the specific provisions of the proposed changes, we have reviewed the Fair Rental Policy Organization of Ontario position and support it in principle. We are puzzled somewhat by the fact that following decontrol, a guideline will be reapplied to the unit in question. This seems to defeat the purpose of restoring the market. After all, the market for those units will have been restored in any event. As such, we recommend full vacancy decontrol. The recontrol of a unit implies that the current system, as modified, will remain in place, which will have a negative impact on new investment.

We have to remember that we have had not had significant investment in rental housing for a long time. Investors have choices, and the more secure the investment, the better. Rental housing as an investment will have to prove itself to be a stable environment for investment. As such, the psychological barriers to investment cannot be underestimated.

For the same reasons, the negative impact of what appear to be the draconian maintenance proposals should be carefully considered. Why should I buy into a system like that with a new apartment building? Why should I jump into that particular pond? I don't really believe that kind of measure is necessary for most of the existing landlords. I believe it's an over-reaction and something that should be reconsidered.

It will be necessary, by the way, for government to sign individual contracts with potential new private rental investors which would provide for long-term investment security. In other words, I don't want to be trapped into building a building with a promise that it will not be rent controlled and then find out some time in the future that a government of the future will say, "It's time we rent-controlled these units." It happened to us in 1975. We were told that anything we built after 1975 would not be rent controlled. Lo and behold, Bill 51 came along, and you know what happened.

There's not too much time left and I just want to give you some personal comments. One is, I see Alvin Curling here. He was the minister responsible for Bill 51. Just as a sidelight, Bill 51 was not a perfect piece of legislation. In fact, it was an agreement between a group of landlords and tenants who worked — we worked; I was one of them — for about 15 months to come to that. But even if it was imperfect, it did result in a spurt of private sector rental accommodation building: in 1986, 8,500 units; in 1987, 12,500 units; in 1988, 10,000 units.

If we look at the piece of legislation that's being proposed now and try to be careful that we are going to make a bit of a non-hostile environment for investment, I think there is an opportunity to build units. As a matter of fact — Alvin is here — last Monday I was in Vancouver. I was the chairman of a conference there and our guest speaker on the opening day was Bob Rae. It was my duty to introduce Bob Rae, so I gave the thumbnail sketch that they provided me with, and then I reminded him about Bill 51. I reminded him of the fact that it was the minority government of the day. We needed three-party support to make it happen and I went to his office at Queen's Park, hand-in-hand with a tenant representative, to seek his support for that bill. In fact, the support was given and the bill happened.

So this decontrol/recontrol is not something that's going to excite me very much. There are certain parts of Ontario where that whole concept will result in major losses in value to buildings because of very depressed markets, and we have to look at it very carefully before we do that.

I've already talked about the maintenance thing, which I consider very bad. I am encouraged by the fact that the legislation will provide the opportunity to do capital improvements. As the previous speaker spoke about no hot water and so on and so forth, if money is going to be made available to do these things, responsible landlords will do them. The existing legislation almost precludes anything like that happening.

I could go on for another 20 minutes, but there may be one or two questions.

The Chair: Actually, Mr Bassel, you've not allowed any time for any questions.

Mr Bassel: I didn't start on time. I was four minutes late in starting, so someone else took part of my time.

The Chair: We appreciate your attendance here and your comments and your involvement in our process.
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FEDERATION OF METRO TENANTS' ASSOCIATIONS

The Chair: The next presenter is the Federation of Metro Tenants' Associations, represented by Henk Mulder, the chair, Janet Morrison, the vice-chair, and Kenn Hale, the chair of the law reform committee. Welcome to our committee. We appreciate your being here.

Mr Henk Mulder: My name is Henk Mulder. I am the chairperson of Federation of the Metro Tenants' Associations. We thank you for giving us the opportunity to provide the committee, the government and the public with the views of the federation's members on the discussion paper, Tenant Protection Legislation — New Directions for Discussion.

Like many of our members, Janet and I have had to overcome serious difficulties with our landlords in order to keep our homes. I have had to fight for years for decent maintenance in my building. We suffered from filthy common areas and mice and cockroaches in our apartments. The parking garages were falling apart and damaging our cars. We organized and the rent control office made the landlord return over \$300,000 to the tenants. Now we are facing a plan by the landlord to demolish the 400 units in our building to make way for luxury condominiums. Remember the address is 325 Bogart Avenue. We have been in the news several times.

Janet has suffered from repair and security problems that would not go away. She was forced to give up her home and move to another building. We know that the legal rights of tenants are not always adequate to do the job, but the discussion paper will take these rights away from us and give landlords even more freedom to exploit people.

I now ask Janet to present the federation's position on the issues raised in this paper.

Ms Janet Morrison: The federation and the goals of tenant protection: As you may know, the Federation of Metro Tenants' Associations is the largest and the oldest tenant organization in Ontario. Through our affiliated associations and individual memberships we have represented tens of thousands of tenants over the 22 years of our existence. We have participated in the development of every piece of provincial legislation since the days of Bill Davis.

We do not represent a narrow interest group; we represent the tenants of the greater Metro Toronto area. We speak for the people who live in the majority of housing units in Metropolitan Toronto. We speak for over one third of the tenants in Ontario. They want us to tell you that the proposals in the discussion paper are not acceptable to them. They want us to demand that you tell Mr Leach and his bureaucrats to go back to the drawing board and present something that meets their need for a decent, affordable place to live.

The paper begins with the government's goals: to reform the tenant protection system; to protect tenants from unfair or double-digit rent increases, evictions and harassment; to provide strong security of tenure; and to improve enforcement of property maintenance standards.

The federation completely agrees with these goals and applauds the government for recognition of them. Unfortunately, the changes that the government is putting forward will do nothing to achieve these goals. In fact, the proposals would strengthen the power of landlords at the expense of tenants. They would result in higher rents, more unfair evictions and harassment and a weakening of security of tenure. In addition, they would likely lead to fewer rental units being available, poorer maintenance of the present rental stock, a deterioration of landlord-tenant relations and less access to justice for tenants.

The government appears to want to carry out legal experiments on Ontario tenants and move away from the legislative approach that has protected us for the last 25 years.

Vacancy decontrol — bleeding rent control to death: The proposal to allow landlords to set new rents once sitting tenants have moved out has nothing to do with protecting tenants. It is a plan to kill off rent control one unit at a time.

Support for rent control among Ontario tenants was evident to most candidates in the last election, and several Metro members now holding cabinet positions campaigned on promises to save rent control.

In the fall 1995 the government commissioned Greg Lampert, a development consultant, to produce a report which he called *The Challenge of Encouraging Investment in New Rental Housing in Ontario*. He told them that the elimination of rent controls must be done in a manner that would not result in negative media coverage. He recognized that there would be a political price to pay for massive economic evictions and he was concerned that landlords would lose out when future governments reintroduced controls.

In the proposal for vacancy decontrol, the government believes that it has found the perfect method of deregulating rents and avoiding a political backlash. Government members can claim that tenants will continue to be protected as long as they remain in their present apartments. Meanwhile they can tell landlords that there is a free market as long as the tenant living in the unit can be persuaded to move. Our members have told us at meeting after meeting that tenants do not believe the government's claim that they will be protected. They have told Al Leach, Isabel Bassett, John Parker, Derwyn Shea and Dave Johnson at public meetings that they do not want to be prisoners in their own apartments. They do not want to be sitting ducks caught between their landlord and their landlord's dream of charging a market rent for their unit.

It is clear that vacancy decontrol will result in the end of any effective control of rent levels; it is just being done the coward's way. Given that 20% of all tenants move each year, it is estimated that 70% of Ontario's units will have had decontrolled rents at the end of five years. Certain sectors of the rental market, those serving students and other parts of the tenant population that

move more often, will be decontrolled at a much quicker rate.

These people are often severely disadvantaged in that they have limited incomes and a limited amount of time to negotiate with their landlords. Seniors and young couples will also be hurt badly since their situations often call for changing the size of their living space. Even seeking a transfer within the same building will result in an increase of rent up to what the market will bear. This puts the lie to the Premier's June 25 statement that tenants will not see their rents rise.

We also ask you to consider the implications for the proposed tribunal trying to cope with the huge number of evictions that take place in Metro Toronto. The vast majority of evictions are due to arrears. The system only functions now because a good percentage of these cases are settled without going before a judge because both parties agree to payment terms. Under the new proposals this will not happen, since the landlord will only get to set a market rate if the eviction is carried out. On the other side, the tenant will only have the benefit of a controlled rent if they stay where they are. Apart from its effect on the system, this will have a disastrous effect on lower-income tenants who occasionally fall into arrears but are able to make it up if they are given time to do so.

The government acknowledges that vacancy decontrol will result in an increase in landlord harassment of tenants in order to obtain vacant possession and decontrol the rent. That is why the discussion paper proposes the creation of an anti-harassment unit. At present, both the Landlord and Tenant Act and the Rent Control Act contain an anti-harassment provision. There is nothing to suggest that the maximum fines provided for in these laws are not sufficient to properly punish lawbreakers. But how often are landlords prosecuted for such behaviour? Where are the crown attorneys to prosecute them?

A government struggling with ways to keep its costs under control is not going to commit sufficient resources to scratch the surface of this problem. Increasing maximum fines and turning some bureaucrat into an anti-harassment officer will not stop harassment. This committee should stop harassment before it starts. You can do so by refusing to endorse vacancy decontrol and the immediate financial incentive it provides to many landlords to force tenants out of their homes.

Rent control — making a mess of what's left: Even if tenants have the stamina and courage to resist landlords' efforts to get them to move, the proposals to protect sitting tenants from unfair rent increases are inadequate and counterproductive. The limit on rent increases for capital expenditures will be relaxed, and tenants will keep on paying for repairs long after the repairs and the interest payments are paid off. There will be no limit on rent hikes to pass tax and utility increases on to tenants, but tenants will no longer be able to share in the benefits of a decreased utility cost. Tenants will not even get the information on these costs that they are entitled to now, and rent officers will not have to give reasons for their decisions unless tenants think to ask them.

The present system of negotiating rent increases would be turned into an opportunity for landlord pressure and threats, as the requirement for rent officer approval of

these agreements would be repealed. Tenants would find their complaints about illegal rent impossible to prove, as the rent registry would be scrapped. The door would be open for the charging of key money and other corrupt practices which led to demands for tighter rent control in the first place.

None of these things can be called "tenant protection." None of these things help builders and investors put up new housing. All they do is further upset the balance in landlord-tenant relations in the landlord's favour. Along with vacancy decontrol they will cause rents to skyrocket, until the next government comes along to undo the damage. The bottom line is that the proposals will take money from the pockets of Ontario's poor to put it into the pockets of the rich. We are here to tell you that the poor pay too much already and can't pay any more.

1510

Maintenance — throwing out what works: Considering that landlords and tenants should have a common interest in the preservation and maintenance of rental housing, there are a vast number of repair problems out there. These range from the minor annoyances of cracked walls and ceilings to the major hazards of dangerous wiring and vermin infestation. For over 25 years the law has placed the responsibility for repair and maintenance where it clearly belongs: on the landlord. Nothing better illustrates the weakness of individual tenant's bargaining power than the fact that this legal obligation is so often avoided.

The discussion paper again hits the nail on the head in recognizing what the problems are. Tenants expect landlords to obey the law and keep rented homes safe and well-maintained. The current system doesn't do enough when landlords fail. So far we agree, but what are the solutions?

Here's what the discussion paper proposes:

Get tenants with repair problems to move out and make way for people who can pay higher rents. Find new ways to force tenants to pay rent even if the landlord refuses to provide a fit place to live. Allow the landlord to raise the rent while defying municipal work orders. Give more power to municipalities which are not interested in using the powers they already have.

We would expect such proposals from landlords who want to find ways to get away with even fewer expenditures on maintenance, but it is difficult to believe that such suggestions are coming from public officials who are developing a legal framework to protect the health and safety of tenants. Of course we support the proposals to increase the powers of municipal inspectors, but this will not result in any improvement in maintenance of rented homes unless municipal councils are willing to devote more resources to inspection and enforcement. In the face of provincial cutbacks to municipal funding, we do not believe they will do so, and the rest of the proposals will only result in the weakening of tenants' abilities to get their landlords to comply with the law. The committee must tell the minister and his bureaucrats that the proposals are dead wrong.

How will tenants get justice from the new system? Seeing how tenants' concerns have been repeatedly dismissed by this government since June 1995, we have grave concerns about putting our faith in any new system

they might set up to resolve our disputes with our landlords. We are even more concerned when they refuse to put their proposals up for discussion during a province-wide consultation process and merely say, "Input is welcomed." We think the committee should demand that the ministry provide details as to how any proposed system could provide a high standard of fairness while meeting the cabinet's demand to cut costs to the bone. We suspect that the only priority would be to carry out the minister's promise of faster evictions, and justice be damned.

Having said that, we must be frank and say that the existing court system and the overlap between what judges can decide and what rent officers can decide create serious problems for tenants. These problems have been made worse by cuts to funding of court staff, legal aid and tenant advice services. The imbalance between the unrepresented tenant and the landlord who is represented by a professional agent or lawyer can be made worse when they appear before a judge who expects strict adherence to rules of procedure and evidence.

There is also a real problem with the documentation required by courts. The paperwork needed to bring landlords to court to account for failures in complying with their obligations deters many tenants from seeking justice. But the court system delivers its decisions in an amazingly short time when compared with the Ministry of Municipal Affairs and Housing's rent officers. In fact, the only real example of delay the discussion paper can point to is delay by the rent officers.

What is of most concern to our members and what we think the committee should be most concerned about are the qualifications and independence of decision-makers. Whatever else can be said of judges of the General Division, they have the education and the ability to understand what the Landlord and Tenant Act is trying to accomplish and they have the independence, guaranteed in the Constitution, to be able to make a decision based on the evidence before them.

How can the committee be confident that the same can be said of those who would make the decisions under whatever proposal the ministry finally comes up with? You must insist on legal safeguards for the qualifications and independence of these decision-makers before any discussion begins on the details of a new tribunal. This will certainly not occur if this function is auctioned off to the highest bidder.

You must insist on one further legal safeguard concerning appeals. The right to appeal an eviction order is worthless unless the law provides that the eviction cannot be carried out until the appeal is over. We know that landlords have convinced the minister that this should not be done, but this has been the law for over 20 years. Furthermore, the courts know how to deal with people who abuse appeal rights. Don't let the government fool you into thinking that tenants can prepare for their appeals while they're out on the street.

Protect tenants by protecting their homes: The discussion paper attempts to hide the fact that the government wants to give a green light to evictions for demolition, renovation and conversion of rental units. One of the ways it is trying to do so is by hiding behind a slogan:

"Focus protection on tenants instead of units." The Rental Housing Protection Act was passed for two reasons: one, to protect security of tenure, directly by protecting tenants in buildings that were threatened with demolition or conversion and indirectly by protecting those who could not afford to pay for major conversions, major renovations or could not afford a down payment on their apartment. Secondly, the government needed to assure that its efforts to get more affordable built were not being undermined by the loss of older units. Both of these objectives are more relevant today than ever.

The minister's message says that tenants must be protected from evictions without just cause. In our opinion, an eviction to allow a landlord to tear down a building is not an eviction for just cause. An eviction to allow a conversion from affordable rental housing to trendy boutiques is not an eviction for just cause. An eviction because a tenant is unable to afford the down payment to buy his or her apartment is not an eviction for just cause. But these are the kinds of evictions that you would be allowing if you eliminate the requirement that there be municipal approval for demolitions, major renovations or conversions. Clearly the effect of this proposal is to weaken security of tenure, not to make it strong. In order to protect the tenants in the units, it is necessary to protect the tenants.

You may agree with the discussion paper when it says that existing affordable housing is a barrier to owners who want to make better use of their land, but it is not just the tenants of the building who feel revulsion when they watch the 6 o'clock news and see perfectly good housing being smashed by a wrecking ball. The general public reacts to this kind of waste, and when they look for who is responsible, they will look to their Conservative MPPs. So we hope that you will agree with us that affordable rental housing is a good enough use for urban land and you will reject the minister's call for an open season on older buildings.

Condominium conversion is not tenant protection: Conversion to condominium or co-ownership is another way the discussion paper seeks to bring about the end of rent control. When a unit is for sale and not for rent, its price is governed only by what the market will bear. Not only is it lost to the rental market, but the requirement for a down payment and mortgage approval means it is out of reach for most tenants. Furthermore, proposals to convert rental housing to condominium or co-ownership create problems for communities beyond the loss of housing.

There is no dramatic event like there is in demolition, and people outside the building hardly know that it is happening. But inside the building, things are different. Inside the building, neighbour is turning against neighbour. The young are turning against the old and the more well-off are turning against the less well-off. The promoter is offering deals and making threats. Politicians are lining up on side or the other.

In the end, some of the tenants think they have won and some of the tenants think they have lost. If the building is converted, some tenants get to keep their homes because they could afford the down payment and the higher monthly charges. Some tenants flip their units

and walk off with a nice profit. Some tenants have their homes sold out from underneath them, and sooner or later the purchaser gets possession. If the conversion fails, the hostility lingers on, and the those who supported the promoter no longer feel welcome in their own building.

Why would tenant protection legislation permit such an ugly scenario to be played out? We believe the government wants to bring these nightmares back because there are promoters waiting in the wings to organize these schemes and that they will make a lot of money. Perhaps the minister believes they will use some of this money to build affordable housing somewhere, but what makes him think it will be somewhere in Ontario? There is nothing in this plan for tenants or the public at large, and the economic evictions that would occur in the aftermath will shake the housing market to its foundations. Along with vacancy decontrol, this is a plan to create friction and contention between tenants and should be soundly rejected by the committee.

The politics of dividing tenants: The federation was created in 1974 as an umbrella organization for tenants' associations. A major part of our work involves helping tenants to organize themselves into associations and thereby look after their own interests without having to rely on government or the legal system. We see cooperation and united action by tenants as one of the only ways the legal and financial might of landlords can be challenged. When tenants work together, the playing field is not levelled out, but it gives tenants a fighting chance.

The government's proposals are based entirely on tenants acting on their own in a marketplace where the players are assumed to have equal strength and ability. In such a world there is no need for consumer protection because the consumers are perfectly able to compete with each other and with the landlord. This world may well exist somewhere in the universe, but it is not in the world of Metro tenants.

The government is encouraging division between tenants. It is telling them not to think of themselves as neighbours facing similar conditions, but as individuals asking the landlord to cut a deal with them, and them alone. Tenant associations have not only been good for tenants, but they have kept disputes out of the expensive public arenas and smoothed out some of the bumps in the relations between landlords and tenants. Tenant organizing will not die if the proposals are adopted, but it will be done for much higher stakes and with no incentive to find a compromise.

Tenants have not bought the minister's rhetoric that taking away their rights is good for them. They do not believe that a democratically elected government has to be held up for ransom by a small group of property owners. They believe that government has an obligation to look out for the best interests of all members of society and that there must be a place where their legitimate grievances can be addressed. The ministry's proposals threaten all these things and it is your committee that can prevent them from being carried out. The Federation of Metro Tenants' Associations asks you to do that.

The Chair: Thank you very much for your presentation. You've used up your allotted 20 minutes. We

appreciate your attendance here this afternoon and your interest in our process.

Mr Kenn Hale: If you have any questions, our address is on the front of the brief. We'd be glad to address them.
1520

P. K. DAVE

The Chair: The next presenter is Mr Dave. Good afternoon, sir, and welcome to our committee.

Mr P. K. Dave: My name is P. K. Dave. I am a tenant at 15 Cougar Court, and this is my friend, Sheba.

With existing regulations under the Rent Control Act, 1992, the costs incurred for tenants for application SB-00096-TT were as follows: First, documents, photocopies, typing etc cost \$400. To obtain various documents, to travel to the ministry rent control offices in Scarborough, to the city of Scarborough and sometimes, for the elevator devices, to the Ministry of Consumer and Commercial Relations at Islington and Bloor, total travel for this particular case was 2,000 kilometres. The price, at 50 cents per kilometre, is \$1,000. Total hours spent in bringing this case to an end was 500. At the minimum wage, \$6.85 — you have the figure before you. These 500 hours also include 52 hours of actual hearing.

For a majority of the tenants this expense is out of bounds, for the very reasons that you know. Most of their monthly income is spent on rent and food and there is nothing very much left over to pay for these extra expenses.

The stress and the running around with all these expenses for a period of 16 months and then when the landlord appealed to the court, it took a further six months before the entire case came to a stop, and still the maintenance or the mandatory heat, hot water, is not guaranteed — absolutely not guaranteed.

Removal of the rent registry and without guideline increase — it's time there should be a decrease of rent when an apartment falls vacant. This is going to create lots of problems and miseries for tenants, as it has been indicated above. A rental unit, or whatever the Ontario government bureaucracy wants to call it, is for we tenants our family's home and you are attacking our home to make an already happy landlord more happy. In short, this proposal wants to hurt a tenant like me.

If the real intention of this government is to protect tenants like myself, then tenants must be given legal rights to deduct from next month's rent cheque any services that have not been provided by the landlord. By "services," I mean the maintenance, the heat, the hot water and things like that. It should be automatic. It can be prorated, you know. If the heat is not provided for five days, the tenants should have a right to deduct automatically from their next month's rent cheque, instead of going to a rent officer, filling out numerous forms, going umpteen times to the rent control offices, going to the Scarborough offices to get the documents and all these things.

This is not protection for the tenants. Very often the rent officers will not personally come out to see actual conditions within the building, apartment or the specific unit because he or she might get prejudiced against the

landlord. This being not the case, it is not protection. Call it by any name. Any questions?

Mr Marchese: We welcome you here and we thank you for the presentation. I think these are the stories that we need to hear from people who are affected and will be more affected by this type of proposal that we fear may become legislation down the line.

You're not the first to talk about the rent registry. Almost every deputant has spoken about the problems with its removal. Mr Leach and the civil servants talked about why there's no more need for it, but the rent registry has helped tenants determine if their rents were legal and to challenge unscrupulous landlords by legal action. That is what the Ontario Coalition of Senior Citizens' Organizations said, and obviously you support that. It's something that I raise because I know every deputant is likely to raise it. So you're not the only one.

One of the points the Ontario coalition of senior citizens raised was that they believe "housing policy must have a larger vision and social purpose than what is currently the trend among governments. Our government has a responsibility to maintain and develop comprehensive housing strategy."

Then we listened to a Mr Bassel, who came earlier on. He said that "for many years rental apartment development has been stymied by well-intentioned but ultimately misguided government intervention directed towards social policy." He seems to have something against government intervention and something against government setting that kind of social policy. Now, as I see it, if governments don't set social policy to protect large numbers of people, who's going to do that? It seems to me they're arguing that the private sector will do that and the market will take care of that. Which opinion do you support?

Mr Dave: I support that the government should not get out of any housing business. Food, shelter and clothing are the three basic necessities of mankind. Whenever you talk of shelter, you are talking of housing. Housing is a right. Already speakers before me have mentioned that rental apartments have generated a 10% return on the investment. That is a percentage and a half more than industry and 3% or 4% more than retail or mixed office use, whatever you want to call it.

With this highest return on rental apartment buildings, why is the industry not capable of building its own rental units? Which industries go out and get the money to finance their things? The banks are more than willing, very often, to give money for a rental apartment.

Mr Marchese: Mr Dave, I want to continue to ask you a question, and I'm always cautious about asking those kinds of questions because if you tend to agree with me that the government should set social policy, you could be accused of being a socialist and, God knows, you need courage for that.

But I want to make another point. If this happens and becomes legislated down the line, what do you think about how immigrants will be affected? We don't talk about that, they never touch that, but a large number of people who come into this country won't be able to afford a home; they'll be immigrants. Is it your sense that immigrants immediately grasp the intricacies of what

their rights are and do you think they'll be able to handle this kind of problem down the line?

Mr Dave: No. Whenever they come into this country, immigrants' first priority is to look for shelter and a job. They are not very familiar with the law. It has happened to me; my landlord has taken me for a ride. That's how I got into it. I wanted to learn it and by putting in this application SB-00096-TT, I have learned a lot. I also learned lots of, if I am permitted to use the word, bullshit. I also learned lots of bullshit from the rent control officers, you know. I'm sorry about the word, but I have asked for your permission to use that.

1530

Very often some immigrants have their immigration status in very doubtful situations and they're afraid to speak. These are the very people landlords try to intimidate. Even those who are legitimate immigrants are also getting intimidated, either by key money deposits or illegal parking charges. When they don't even have an Ontario driver's licence, they still have to pay for two parking spots. It goes on and on, and whenever you bring it to the ministry, the ministry takes absolutely no action. I would say, to put it in Rudyard Kipling's words, that the ministry has been immensely successful in doing absolutely nothing with an immense success.

Mr Ernie Hardeman (Oxford): Good afternoon, Mr Dave, and thank you for your presentation. First of all, I sympathize with you that you would have to spend \$4,825 to address a concern you had with your landlord. That's one good example that the present system isn't working properly. That type of thing should be settled with less time and money expended.

I have a couple of questions on your presentation. First of all, separate from removing the guidelines on rent increases, you also expressed concern about the actual removal of the registry. Could you elaborate on that, as to why you have concerns as it relates to tenants? The landlords tell us they have some concerns with removing the registry because it will not allow them to make up the difference between the allowable rent and the present rent. Why do you feel tenants have a concern with that?

Mr Dave: Tenants are concerned, because very often the landlord is charging much above the rent registry guideline. Without knowing how much a landlord can actually charge, the tenant is always paying \$20, \$40, \$50 extra. With these things, if the rent registry is removed, there is no way the tenant can ever find out what actual rent he has to pay. Does that answer your question?

Mr Hardeman: Yes. The other one: You suggested that for lack of service such as heat and water and so forth, the tenants should be allowed to deduct that immediately from the cheque. Do you not see that there is a bit of a problem with that? There may be some tenants who would deduct things off the cheques that weren't lacking? If we give that right to tenants, do we then also add that same right to the landlords, who could charge for things that were, in their opinion, damaged or not looked after properly, they could just immediately add that on? Do you not see a fairness, that we have to be fair for both the tenant and the landlord?

Mr Dave: The present legislation under the rent control is not fair for tenants. If a tenant doesn't get heat

or hot water, he has to call in the property standards inspector to get a letter which certifies that there is no hot water, there is no heat. This takes a tenant 30 days under access to freedom of information, and very often the tenant has to pay to get this document. Then it goes to the rent control officer, and as I explained it to you earlier — if you were here; I do not know — it took 16 months before the rent officer could give the judgement.

To cut all this bureaucracy, if the landlord knows that he is going to get prorated, maybe 5%, maybe 10%, whatever the government is going to decide, what will happen is that he is going to fix it because he will know immediately that if hot water is denied for two days, then he will have 5% less rent collection the following month. Everything will work out fine.

I would like to remind you of one thing: The Russian Revolution was not started by Lenin; it was started by ordinary housewives no better than this audience here because they were denied heating oil by czars. These women were standing, on an early morning in October, outside the store to get heating oil. They wanted — no, let me finish. They wanted heating oil to warm their homes and to cook meals for their families. When they were denied, they rioted, and from that the revolution started. This is the same situation that we had in West Lodge last year in January.

Mr Sergio: Mr Dave, sorry I missed your presentation, but I have a couple of questions and I would appreciate if you could expand a little bit so it gives me a bit more from your side. We had the minister here this morning. He said to us that he wants to fix the system; he wants to make sure that it's a much fairer and more balanced system. I'm sure you're well familiar with the proposed tenant reform package. Do you think the proposed reform, as it is, will accomplish that?

Mr Dave: No.

Mr Sergio: Why not?

Mr Dave: No, because the protection, you can call it anything, but it is going to be —

Mr Sergio: I have another question for you if you're not going to be that long.

Mr Dave: Ask the question.

Mr Sergio: No, answer the first question. Go ahead.

Mr Dave: They are calling it protection, but calling it protection is to fool the tenants. You can fool some of the people some of the time, not all the people all the time.

Mr Sergio: There seem to be a lot of disputes between landlords and tenants, and one way is to get to those problems and solve them as quickly as possible in a very efficient manner. We also had the minister this morning saying that he wants to create a system that is much more easily accessible and create a much faster system to deal with those problems. Again, there are a number of steps proposed in here to deal with those problems. Do you see those steps being more of a higher hindrance to solve those problems or will this assist in those problems between landlords and tenants?

Mr Dave: The way I see it is that any new system is going to be like an old wine in a new bottle; basically, it will be the same. It will still be time-consuming, it will still be having the same problems, maybe more than what we are already accustomed to.

Mr Sergio: What would you recommend to us?

Mr Dave: I would recommend, as I have stated, that if the landlord does not provide the service, in this era of "pay as you go" deduct it immediately. That will be the simple solution.

Mr Sergio: The minister did say: "I have an open mind. I want to hear from the people and then recommendations from this committee." What would you recommend that we suggest to the minister that he change in his report?

Mr Dave: This is what I recommend: If the landlord does not provide you the service, you immediately deduct the money from the rent cheque. If the landlord wants to get it redressed, he can go to the rent control office and fill out — you know, you can have catch-22 — form 22. Let him hear after 16 months.

The Chair: Thank you, Mr Dave.

PETER TABUNS

The Chair: The next presenter is Peter Tabuns, councillor, ward 8. Good afternoon, sir. Welcome to our committee.

Mr Peter Tabuns: Thank you for allowing me to speak to you today. I think most people who come to these hearings will want to be constructive and conciliatory in trying to come to grips with the proposals before them, but my fear is that most of us who read these changes will find that there isn't a way to be anything but very sharp, and that's to say that you should not proceed with what's suggested by the government.

I feel, and the tenants in my ward feel, that if these changes were to go through then effectively the situation for renters in Ontario would become dramatically worse. It would essentially set a time bomb underneath the tenants in this province whose homes would be at risk in the years to come as landlords wanting to increase the revenue on units would be taking steps to push them out of those units.

Under the name of tenant protection, this government is suggesting many changes that would be truly detrimental to tenants and the communities they live in. There's no question that the statutory guideline increase has been capped at 2.8%. I think the government feels it's kept its promises, that it's working in the best interest of the tenants. But in addition, they've increased the above-guideline increase for capital expenditures to 4% and made provisions to allow for unlimited increases in rents based on increases in property taxes or utility costs. All these changes mean less predictability for tenants and the potential for much higher rent increases than under the current system.

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The province also wants to get rid of the "costs no longer borne" provision that is in the current legislation. The elimination of this provision would effectively allow landlords to continue to charge tenants for capital repairs even after the full cost of the item has been recovered through the rents.

When we look at the actions that the government is taking or ask about the impact that the provisions for unlimited rent increases based on higher property taxes

will have on tenants in view of the pending property tax reforms, we're told that in all likelihood tenants will see a benefit. We're told that it's very possible that property taxes for rental buildings could go to down. If this is the case, there should be a mechanism in place whereby there's an automatic reduction in rents for tenants. As I read the information before us, tenants will have to apply for a rent reduction, and I'm not sure that the way things are structured or will be structured will ensure that reduction is passed through to them. Asking the tenants to trust that they will be better off is not a prudent course.

I'm also concerned about the provision for unlimited increases based on above-average utility costs. Under the government's proposal, landlords could be granted an above-guideline increase in rents because it was an unusually cold winter and heating costs had increased. Tenants, however, will no longer be able to apply for a rent reduction the following year when the landlord's heating costs go back down.

Because of the proposed vacancy decontrol, the government feels that it is no longer necessary to keep the provincial rent registry in place. What this means is that tenants will have no way to access essential information regarding rent increases, nor will they be able to monitor the fairness of their landlord.

Even in the area of maintenance and enforcement of property standards, where the province has tried to extend an olive branch to the municipalities, it has stacked the deck very heavily against the tenants. In their proposal, it's suggested that as an aid to municipalities in enforcing property standards the province will introduce provisions which will allow municipalities to do the necessary remedial repairs and to recover their costs by adding them to the municipal taxes.

How does this fit with the earlier provision that any significant increases in property taxes can be passed on to tenants through the rents? Some will argue that effectively the work that is being done constitutes capital repairs and therefore it's a legitimate cost which should be borne by the tenants. But those, like myself, who are municipal politicians and who work with tenants on a daily basis know that the municipality would only become involved in making repairs if there's been an ongoing, recurring, significant problem and the landlord has repeatedly refused to cooperate or work with the city to find a solution. None the less, the way the current proposal reads, it would be the tenant who pays.

The province is also proposing the elimination of the orders for preventing rent increases or what we call OPRI's. Not to mention that this has been the single most effective tool for the city of Toronto in gaining timely compliance on property standards violations, I want to look at what this means for tenants. Effectively, it means that they could continue to see rent increases even when there are outstanding work orders on their property. I don't think this is fair and I don't think it'll be seen as fair by the people of this province.

Where are the protections for tenants? Are the protections in the anti-harassment unit that the government is proposing? First, we should look at why it's so important to introduce stronger anti-harassment measures. I think

the government is fully aware that one of the very real outcomes of the changes they're proposing is increased tenant harassment as landlords try to get tenants to move so that they can increase the rents. I think we'll find that this harassment won't always be something that is immediately easy to prove.

I remember reading a case in New York City where a landlord would shove hundreds of cockroaches under the door of a unit to try and get a tenant to move so the landlord could increase the rent on the apartment. This would happen on repeated occasions, but it was almost impossible to prove that the landlord was doing this. I remember stories in the city of Toronto where very unsavory characters were hired as superintendents of buildings to make those buildings inhospitable to the tenants who were there.

As you probably heard before, most of the tenants who have been harassed into moving will be more concerned with finding another place to live and will not have the time to spend with investigators or court proceedings. It's also important to recognize that only the most capable and determined tenants would likely be successful in realizing justice. This is especially true given the cuts to funding for the different tenant advocacy and resource groups. And given concern about provincial finances, what sort of resources are going to be allocated to this anti-harassment group? Are we going to have five people covering the province? Are we going to have one inspector for every 300 units? You could set up such an anti-harassment system and undersource it so that effectively it was a dead letter.

Another way of getting tenants to move so that rents can be increased is to offer reduced service or maintenance. Is this something which can be dealt with effectively through the anti-harassment unit? In my opinion, no. Is this something which will be addressed adequately through the proposed dispute resolution system? It's hard to say because the government has not really provided any details as to what this system will look like. However, given the bias the government has shown to date in the development of this legislation, it's likely safe to say that tenants' rights and concerns will not really be respected.

I think the government has to really think about the cumulative impact that their proposed changes will have on the quality of life for renters in the province of Ontario. Not only have the proposed changes dramatically weakened the current protections for tenants, but these changes also mean that tenants will be trapped in their units, unable to find suitable alternative accommodation.

When I was coming down today with tenants from my ward to these hearings, a number who are seniors said, yes, with the system that you're proposing, they will never feel secure enough to move out. They will be stuck in their unit because the moment they leave, their protection disappears. And you have a very large population, not just in the city of Toronto but I would guess across the province, of seniors who will be hanging on to those units for dear life.

This, combined with tight rental market conditions, the elimination of the non-profit housing program, the removal of the Rental Housing Protection Act and

significant cuts to social assistance, means that renters will have fewer and fewer options available to them. I have serious concerns about what this means for the tenants and the communities where they live. There is no doubt that there will be more and more families and households who will not be able to find suitable housing. It could also mean there are more and more families who are actually homeless. We already know that there is an emerging evictions crisis in the city of Toronto. If allowed to go through, these changes will only compound the problem.

I believe it's imperative that this government reconsider the changes they are proposing before it's too late.

Mr Maves: We had a landlord in earlier and he mentioned the high proportion of costs that he incurs because of municipal property tax. I understand that up to 40% of a landlord's operating costs in the city of Toronto are because of municipal property taxes. Are you aware of that? Is that accurate?

Mr Tabuns: I can't comment on its accuracy. I haven't seen his books. I don't know if that's true or false.

Mr Maves: Have you had representations at city council from tenant advocacy groups about the high impact of municipal property taxes on rents?

Mr Tabuns: We've had concern on the part of tenant advocacy groups about the fact that tenants are charged on a commercial basis as opposed to residential homeowners, who are charged on a different rate. There is concern that there is a higher taxation level for tenants than there is for homeowners.

Mr Maves: Because 40% is a pretty high proportion of rent, so I imagine you'd be supportive of lowering that burden if that was a possibility.

Mr Tabuns: I think that if you were to reform property taxes and move a big chunk of the education tax on to the income tax system, that would be progressive.

Mr Maves: You're in favour of reforming the property tax. Thank you.

Mr Tilson: Mr Tabuns, you are a councillor with the city of Toronto.

Mr Tabuns: Yes, I am.

Mr Tilson: I notice the city of Toronto has been quite active with respect to opposing any changes to rent control legislation —

Mr Tabuns: That's correct.

Mr Tilson: — really since last year. There have been quite active programs. There's been a "Save rent control" campaign: bus shelter posters, buttons. In fact, I think this afternoon the mayor is coming with Councillor Gardner. The city of Toronto taxpayer is funding that program. Can you tell us what that total program costs the taxpayer of the city of Toronto?

Mr Tabuns: Approximately \$250,000.

Mr Tilson: Wow. Thank you.

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Mr Boushy: I'm kind of surprised that you, as one of the leaders in the community, had no recommendation whatsoever, only criticism of our program. Do you have any recommendation?

Mr Tabuns: Yes. Stay with the existing system.

Mr Boushy: Are you satisfied with the present status quo?

Mr Tabuns: As opposed to the alternatives, yes.

Mr Boushy: How come, then, in Toronto you have so much trouble with the present system?

Mr Tabuns: Could you explain what you mean by "so much trouble," sir?

Mr Boushy: You have high rents in Toronto. You have hardly any rental accommodation for the people to rent. You have problems. If you are in favour of the system as it exists, then why are you having so many problems?

Mr Tabuns: I would say that most of our problems relate to the operations of the market. We have a situation in Toronto where the cost of land and the cost of construction is such that new buildings cost a lot more than buildings that have been around for one, two or three decades. As long as the cost of land is very high, as long as there's speculation, we are going to have a very difficult time getting new rental construction built in this city. I was a very strong supporter of social and non-profit housing. I think in western Europe, in some very dynamic economies, it was a very successful way of dealing with a housing crisis.

Mr Sergio: Peter, thank you very much for coming. I think it's good of you to come and speak in support of the tenants in Toronto, especially those in your area.

Just a couple of questions, if you can expand a little bit. We had the minister himself this morning here saying to the committee that the recommendation that he has in his reform package will not provide enough incentive to developers to come out and build more rental accommodation. Knowing how tight is the situation in Metropolitan Toronto, not only in the city of Toronto, what do you think the province, the minister, should be doing as further incentives to developers to come up with some plan and build more affordable units?

Mr Tabuns: I think the solution we have to have in the city of Toronto is a large program of non-profit housing development. I think the development industry is quite happy to build under their own ownership or under the ownership of the community, and non-profit housing provided tens of thousands of units that provided secure, affordable housing for the population.

Mr Sergio: Also, the minister this morning said that no change means no choice.

Mr Tabuns: Yes, I've heard that argument. I saw that argument.

Mr Sergio: Is there any choice in this proposed reform? Is there any choice for tenants in this proposed reform?

Mr Tabuns: No. What this means is that tenants with tight incomes are now going to be chained to their units. If you have any concern whatsoever about being able to afford your unit and you're in a unit that for the moment fits your financial needs, even if it doesn't fit your needs in terms of size or location, you're stuck, because once you leave that unit, you're thrown on the mercy of the market, and if the market is moving up and your income isn't, you are essentially imprisoned in your unit.

Mr Sergio: Again, because of the number of complaints between landlords and tenants, because of tight-

ness in the court system and the cuts which the courts are receiving from the present government, stuff like that, do you think that many tenants would feel perhaps not so free to complain or go to court and they are forced to stay where they are even though they would like to move to another area or a different building or a bigger unit, stuff like that?

Mr Tabuns: I'm sorry, sir. I don't quite understand how that ties in with the courts.

Mr Sergio: If they have complaints with the building, let's say, harassment or whatever, they feel compelled to stay where they are now because —

Mr Tabuns: I see what you're saying. I would say that for most tenants, dealing with the legal system requires a pretty high level of sophistication and only a small minority will actually ever take advantage of the judicial system. I think your criticism is correct. The system is clogged, very slow-moving. I would suspect most people will not take advantage of their admittedly limited rights in using the court system. They will stay where they are.

Mr Marchese: Mr Tabuns, thank you for your presentation. It was, I thought, a very gentle criticism of the government, so I was a bit surprised. I was hoping for a little more kind of acerbic attack on this bad proposal, but we appreciate the comments.

By the way, you're not alone in your criticisms. The Ontario Coalition of Senior Citizens' Organizations has raised similar concerns as you have in terms of the rent registry, in terms of costs no longer borne. Almost everything else that you raised, I think they raised as well.

The other matter you've raised that I'm interested in as well is the proposed strengthening of the anti-harassment measures, that somehow that's going to be good protection for tenants. You raised questions about whether or not that's going to be effective. In fact, the seniors raised the same issues.

Seniors are very frightened generally. As you get to that age you are very intimidated, frightened, about who your caregivers are and who you have to negotiate with. In fact, there's a great deal of trust and reliance on people to be kind to you. I'm not quite sure how seniors, immigrants, students, just the general public will be able to have access to what their rights are, because generally they don't know what their rights are. So I'm not quite sure how you access the system if you feel somehow you've been treated unfairly. I'm not sure that by simply proposing higher fines, somehow that will dismiss the problems or it will somehow intimidate the landlord to the extent that they won't harass people. I raise the same questions you do about all of this.

I wanted to ask you a point that I've asked a previous speaker, because a Mr Bassel has come and said that in his view, "For many years, rental apartment development has been stymied by well-intentioned but ultimately misguided government intervention directed towards social policy and political objectives at the expense of sustaining a balanced housing market." Obviously they don't think governments should play the role that we have had as NDPers, and they in fact think that setting the kind of social policy that we did around housing is

bad. Do you have a view on the role of governments in relation to housing?

Mr Tabuns: That's a very broad question, Mr Marchese. Where do I start writing? I would say, very broadly, that I think governments need to take an activist and interventionist approach, given that the market, for a variety of reasons, is not able to provide large volumes of good quality housing at an affordable cost. I think government simply does in this area have to step in.

I would say that outside of direct government intervention in terms of actually building and financing housing, government should take action to ensure there isn't a monopoly in land ownership or collusion in pricing of land or of new housing so that there is actual competition in the market. I'm not accusing anyone of anything illegal, but I think that if you look at the history of housing prices in Montreal and Toronto for the last 40 years, you'll see that in Montreal, where there was much more diffuse land ownership, housing costs were much lower than in the GTA, where there is much more concentrated ownership of land. I think government would have difficulty stepping in there but I think it should look for and find a way to do that so that prices are in a range the population can live with.

The Chair: Thank you, Mr Tabuns. We appreciate your presence here this afternoon and your interest in our process.

JOINT CONSTRUCTION COUNCIL

The Chair: Our next presenter is Michael Steele, the chair of the Joint Construction Council. Good afternoon Mr Steele. You have a half-hour of our time to use as you see fit. Excuse me: 20 minutes.

Mr Michael Steele: I was going to thank you for the extension already.

The Chair: That's kind of déjà vu, that half-hour was. Any time you allow for questions will begin with the Liberals. The floor is yours, sir.

Mr Steele: First of all, thank you very much for the opportunity, ladies and gentlemen. There is a handout which I will basically go through. The handout is there for your records.

As the Chairman has mentioned, my name is Michael Steele. Currently I'm the general manager of building technology for an engineering group called Construction Control Inc; a member of various committees including Canadian Commission on Building and Fire Codes, standing committee part 3, fire protection; a member of the Ontario Building Code Commission; past member of the Ontario Building Materials Evaluation Commission, and the list goes on and on, including that currently I am president of a non-profit housing provider within the community, so I've sort of seen and am involved with various aspects of the building industry, including the provision of rental accommodation to tenants.

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The Joint Construction Council is composed of building industry standards experts and sponsored by the Metropolitan Toronto Apartment Builders' Association and the Urban Development Institute. Its members are the principal providers of multifamily housing stock in the province. For 20 years the council has been recognized as

the principal industry group which reviews and recommends changes to Ontario and the national building and fire codes and other related technical standards issues relative to multifamily housing construction.

The council is pleased that the government is taking action on the issue of rental housing supply and rent controls. We know that the current system does not work effectively, as is evident in the fact that no new units have been built for many years and few are being rehabilitated. The system in place now does nothing to encourage investment in existing buildings or, for that matter, new construction.

Presently the economic costs of building new rental units are out of line with what the market will permit, certainly in the greater GTA. The only solution, given that vacancies are not likely going to increase in any meaningful way and new residential construction is stagnant, is to bring costs down in a number of areas, including the regulatory and approvals process.

While these proposals address part of that issue, we need to go further. I'd like to discuss what some of those changes should be and respond to relevant questions concerning the changes proposed in the New Directions package.

The rent control system cannot be neatly separated from building standards issues, whether on existing or new construction. By the same token, standards issues cannot be separated from rent control issues. The housing industry has serious concerns with respect to existing building regulations and the construction process. Many of the regulatory barriers which have been identified by the Joint Construction Council were covered in the Lampert report concerning barriers to investment in new rental housing, the report that was published earlier this year.

The industry believes that the current regulatory environment creates confusion, delay, the stifling of innovation and higher-than-necessary costs. The government has indicated it wants to eliminate unnecessary regulations and bureaucracy. As such, we're somewhat surprised by the draconian enforcement and maintenance measures outlined in the proposals.

What we propose to accomplish today is to review a number of issues related to technical barriers to investment in rental housing and address some of the issues concerning the maintenance provisions of the government proposals.

Technical barriers to new investment — consolidation: Acts and regulations governing the design, construction and safe use of buildings are administered by several ministries. This creates overlap and inefficiency. It also makes it more difficult for industry to address the concerns of government. Other jurisdictions — examples are BC, Manitoba, Indiana, New Jersey — have consolidated building and safety regulations under a single authority.

The industry recommends that the government place major acts and regulations governing building design and new and retrofit construction under one ministry or administrative authority. This would include building code, fire code, technical standards legislation and occupational health and safety. This matter is being pursued further with the Red Tape Review Commission.

Enforcement: Overlapping of the roles of building, fire and property standards officials in enforcing building regulations is wasteful and unnecessary. For example, Ontario building code concepts referenced in the Ontario fire code retrofit regulations are sometimes interpreted differently by fire officials rather than building officials. The industry recommends that the government place responsibility for enforcement in the hands of one municipal inspectorate and encourage construction and/or building design experience in addition to codes knowledge as a qualification for inspectors. Consideration should also be given to allowing accredited professionals to assist in the enforcement process and, in doing so, providing for greater efficiencies as is currently the practice in parts of BC and Alberta.

Municipal regulation: Municipal requirements under mechanisms such as site plan control should not exceed the requirements of provincial construction codes which are intended to create uniform, province-wide standards. The industry recommends that the government legislatively remove existing municipal requirements which are inconsistent with the intent of the Ontario building code.

Discretion, and this is one which we think is a great inhibitor to getting on with the job: The inability or refusal of building and fire officials to exercise reasonable discretion in the enforcement of the OBC and OFC creates unnecessary delay and expense in getting projects approved and buildings retrofitted. Liability fright is a factor, and I could repeat that statement all day. Other jurisdictions have more flexible rules for acceptance of alternative designs and solutions than does Ontario.

The industry recommends that the government enable building officials to exercise discretion in accepting innovative approaches to building designs and provide a legal safety net for the exercise of discretion in good faith.

Code requirements: The industry believes that many code requirements are unnecessary or unduly restrictive. A list of potential measures which the industry recommends that the government examine could include:

Major proposed restrictions on building design should be subject to, among other things, a thorough cost-benefit analysis. Proposals which are not cost-effective should be reconsidered, subject of course to the conformance with life safety requirements and regulations.

Whole-building sprinklering for apartment buildings and other structures has not been demonstrated to be a cost-effective way of ensuring the life safety of occupants and therefore should not be mandated into the Ontario building code.

The energy conservation measure ASHRAE 90.1 should be removed from the building code.

Under Ontario building code part 11 renovation is difficult to understand and apply. The extent of upgrading required of existing buildings needs better expression to lessen the unreasonable imposition of costly upgrades. The retroactive application of building regulations should, and I might emphasize must, be avoided.

Building regulations should be reviewed to identify restrictions which may be removed or modified. Codes of other jurisdictions should be reviewed to identify admin-

istrative procedures and technical allowances which are facilitative of design freedom and economies.

Approval of innovative solutions with regard to the use of material and non-standard design approaches should be facilitated.

Lastly, code content not related to health and safety should be considered for deletion. As examples, why do we specify dimensions for rooms, full-height basement insulation, energy efficiency etc which are not necessarily found in other jurisdictions and don't necessarily meet the lifestyles of our multicultural environment?

Certified professionals: The industry believes that the government should establish a certified professionals program to expedite an independent authoritative review and approval process. The industry notes that such an approach has been operating successfully in Vancouver and Alberta for several years.

The Ontario building code review process: Ontario's code development process has not been consistent in terms of timing, evaluation criteria, appropriate industry input and recording of rationale. The balance of interests in advisory committees and familiarity of members with safety issues and design and construction processes, both past and present, affects the quality of the decision-making process. This particular issue is currently under review through discussions with other committees in government.

The industry recommends that the government review and redefine, with industry input, the participation of interest groups on Ontario building code advisory committees and the qualifications of members of these committees; review the extent of committee influence and the documentation of decisions; and establish a means for continuous, efficient industry liaison on developing issues.

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Culture of building regulation, development, administration and enforcement: Over time the development, administration and enforcement of building and fire regulations have become an identifiable subculture. The bureaucracy has become larger and more complex and its ability to understand industry and owner concerns has been questioned. Some regulations appear to convenience enforcers or enhance their scope of operations without providing significant benefit to tenants or owners. Regulations have become a growth industry for officials, lawyers and consultants. I can attest to that, being in the consultant field. To some observers there has been a gradual shift in the outlook or attitude of the administrators of building design regulations to a more enforcement-oriented, liability-concerned, litigious approach.

The industry recommends that government inspire an attitude which is proactive in trying to enhance freedom of design and use for owners, occupants and builders while maintaining appropriate levels of health and safety. We recommend that consideration be given to developing legislative limitations on liability for those responsible for the enforcement of building regulations.

Occupational health and safety: Regulations affecting construction projects under the act will be reviewed this fall by the Ministry of Labour. The health and safety of construction workers is of paramount importance to

employers. However, certain regulations have been unnecessarily difficult to abide by. The industry submission will go forward to the Ministry of Labour shortly.

Supply of trades: The low volume of construction activity has resulted in the departure of many workers from the industry. An increase in activity could well result in shortages of trades. The construction industry recommends that the government, in partnership with industry, strengthen the construction apprenticeship training system and allow for multiskilling abilities of trades.

The industry believes substantial efficiencies are achievable in the reform of development and building procedures. Clearly the housing industry has a number of concerns with respect to the impact of government charges and regulations on the costs of rehabilitation of both existing, and the development of new, rental housing in Ontario. In addition, fees and charges which are direct government-mandated costs for rehabilitation, the planning and approvals process and environmental and building regulations impose delays and undue costs on the industry. Streamlining these processes and regulations will have an important flow-through benefit on the costs of both the renovation of existing stock and the creation of new housing development, including the building of new rental housing.

Maintenance proposals: Communication is paramount in establishing good maintenance standards between all three responsible groups: tenants, landlords and property standard officers. Anything in the proposals that reduces communication is regressive. As a result of past and existing regulations, a culture has developed whereby adversarial positions are immediately developed, preventing effective and efficient communication among the parties.

In the interest of promoting good maintenance, property owners must be given proper notice, in writing, of maintenance requirements and deficiencies. Tenants should be educated to provide property owners with this notice in writing in order to allow for an adequate period within which the situation can be rectified.

We would recommend that if there is a need to expedite the property standards enforcement process, the notice-of-violation stage be bypassed. If a notice of violation is to become an optional stage in the property standards enforcement process, there must be clear criteria under which this option may be exercised. For example, proof from a tenant that a landlord has received written notice and has had sufficient time to remedy a problem may be an acceptable substitute for the notice step. However, if there is an indication of tampering or malicious damage, a notice with a reasonable time frame should still be issued.

Property standards officers will be given more powers, including the authority to have a property inspected by a qualified expert when an owner does not provide sufficient information. Prudent landlords regularly make use of engineers and other consultants to keep them informed of and help plan maintenance expenditures on their buildings. Larger landlords often have consultants on staff. Therefore, a stamped engineer's report on the part

of a landlord is not an onerous requirement and should be sufficient for normal purposes.

If the landlord does not agree with the property standards officer's engineer's report, there should be recourse to an appeal level. Criteria for a property standards officer to commission an expert report should be clarified. A report may be commissioned after conviction for an offence or if a work order is outstanding for a specific period of time.

Two important cornerstones of a fair and balanced maintenance process are notice provisions and the opportunity to rectify. We cannot emphasize enough that landlords must be informed in writing of requests to maintain and proof must be shown of delivery before any order is issued.

The proposals greatly increase fines for landlords who fail to comply. Fines are a preferred route to rent reductions, which reduce the income stream. Less income normally makes it impossible for the present or any future landlord to do the work required.

Municipal property standards enforcement could assist landlords in enforcing standards of in-suite cleanliness by requiring the tenant to cooperate with landlords in complying with the requirements of bylaws. While we don't foresee officers issuing orders against tenants, such bylaws and assistance on the part of the officers would help to enforce in-suite standards to the benefit of all tenants.

In conclusion, and thanking you for your time, I might note that what's presented here is; in our view, only part of a discussion which we're pleased to see going on with the government and players in the industry, both tenants and providers, because the system is broken and does require fixing.

Mr Sergio: Thank you, Mr Steele, for your in-depth technical presentation. I enjoyed it very much. Quickly, tell me what this proposed tenant reform package here does to tenants in Ontario, in your view.

Mr Steele: The package, as it stands right now, doesn't create the kind of balance that the industry expected to see brought in by this government. Though the weighting has shifted, I don't believe the balance isn't there to allow and encourage the kind of open dialogue and trust that is required to have the system work. Any system has to rely on communication, and if it's going to require and rely on another set of bureaucratic procedures, we're not going to get the trust back into the system that was required for it to work efficiently.

Mr Marchese: Mr Steele, you raised some interesting questions with respect to technical barriers to new investment, and some of them I could agree with and some of those things I think we should be exploring. There are some questions I have on pages 3 and 4 and there are some I think should be dealt with. I disagree with your statement, however, where you say, "We know the current system does not work as is evident in the fact that effectively no new units have been built...." The government has been the only one building, and if the government were not building, you'd have a whole slew of people unemployed out there. It's not because we've been involved as a government that no one has been building.

As you are fully aware, the private sector isn't building because it wants a red carpet. It isn't just technical changes but it's a whole list of things you haven't mentioned that Mr Lampert raises. That red carpet kind of treatment is, for me, the kinds of subsidies and support the private sector is looking for to build. If that's the case, I'd rather build it myself in terms of what government should be doing.

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Mr Tilson: Your comments with respect to bureaucracies and overlaps and that sort of thing in the enforcement of building codes and property standards bylaws, all of that: Are you hinting that this type of thing — the inspections in particular — that goes on by the province, by the municipalities, is ripe for some form of self-management?

Mr Steele: Certainly self-management could play a role with it. Currently on any given site in the city we can have four or five layers of inspection of various types of authorities, be they from the professional — there's a tremendous amount of overlap which is not necessary with regard to putting up a safe product.

Mr Tilson: I'm sure the ministry will look at your comments very carefully.

The Chair: Thank you, Mr Steele. We appreciate you being involved in our process.

CITY OF TORONTO

The Chair: Our next presenters, from the city of Toronto, are Councillor Kay Gardner and Her Worship Mayor Barbara Hall.

Ms Kay Gardner: Thank you, Mr Chair. I would like the mayor to share half of my time, so I will allow her worship to speak in the beginning.

Ms Barbara Hall: Thank you, Mr Chair, members of the committee. I appear before you today to outline serious concerns that the city of Toronto has with respect to the proposed tenant protection legislation that eliminates rent control. The city of Toronto council has unanimously endorsed a position that the Rent Control Act, the Rental Housing Protection Act and the Landlord and Tenant Act be maintained.

The city of Toronto has a long history of working with provincial governments of all parties to establish progressive legislation that protects tenants and preserves rental housing. In the early 1970s, the city worked with the then Conservative government to develop and bring forward rent review legislation.

Toronto today is in the midst of a housing crisis. Sixty-three per cent of our residents are tenants and 34% of those tenants are already paying more than 30% of their income on rent. We are experiencing unprecedented numbers of homeless people in our streets and there's a disturbing rise in the number of families with young children that are unable to find affordable housing.

Vacancy rates in Toronto are 0.8%; they're expected to drop to 0.5% by the end of this year. A vacancy rate of 2.5% is considered a healthy rental market. There's a dramatic rise in economic evictions. In January 1996, court applications for evictions rose by 33% over January 1995. In the same period forced evictions by the sheriff rose by 25%.

I believe that in response to the situation in Toronto the policy outlined in New Directions is the wrong direction. It will not solve the problems that are contributing to our housing crisis; indeed, it will make them worse.

The minister claims that these changes will stimulate the market to create the conditions to build badly needed rental housing units. The minister also claims that this is a better package for tenants. I disagree with both these claims. The fact that the government is prepared to establish an anti-harassment unit shows that even the government believes these changes will create situations where landlords, in an effort to increase rents, will create intolerable conditions where tenants will be forced to leave.

Government cuts have already reduced services that have traditionally supported and represented the interests of tenants. These proposed changes, combined with the lack of access to services for those most vulnerable in our city, will result in a situation where tenants will not have a voice.

Toronto has many communities that will be severely affected by these changes: seniors, low- and moderate-income families, low-income singles, the hard-to-house, those who are psychiatric consumer-survivors, new immigrants, refugees and single-parent families. These groups are fearful of the proposed changes and I believe their fears are justified.

The elimination of rent control on units once they are vacated will create a situation where people are virtually prisoners in their homes. Often people have to move. In fact, mobility creates a healthy housing market. However, if the proposed reforms are adopted, the government will be creating a situation where low-income people will not be able to move because they won't be able to afford a market-priced unit. The result will be that people will be either overhoused or underhoused. Ultimately, this will result in an inefficient use of our existing housing stock. If we look at the statistics on how frequently people move, by the end of five years we will have totally decontrolled units, the loss of all our affordable units in the city of Toronto.

The issue of the stimulation of new rental units is not supported by the facts here either. There are many issues that affect whether or not units are built. I believe there are a number that are much more important than rent control, and those are issues that should be worked on.

The greatest method of creating new, affordable rental housing would be for the government to get back into the housing business. I believe that to have a range of affordable housing available, there is an important, ongoing role for the public sector in meeting the housing needs of Ontarians and Canadians.

I urge the committee to abandon the proposals outlined in the tenant protection legislation and New Directions, but not to stop there. There are issues that need change and we need a comprehensive housing strategy, but I believe that requires that tenants, the development industry, landlords and municipalities be brought to the table to work together with you as partners.

It's in the interests of all of us — those of us who are tenants, those of us who own our own property — to have people properly housed in the city of Toronto and throughout the province. People being homeless or people

spending too much of their income on housing creates social instability, and that has a negative impact on all of us.

The lives of tenants and the livelihood of the province's largest city depend on a comprehensive, realistic housing strategy from this government, not on a gamble that the market alone will solve the problem.

The city of Toronto has developed a list of principles of a fair system. I submit them to you as the basis for real tenant protection and I say to you that we at the city of Toronto would like to work with you to have the comprehensive housing strategy that we as a community and we as a province require.

Ms Gardner: Mr Chairman and members of the committee, the government has named its proposed new landlord and tenant legislation the Tenant Protection Act. Never before, to my knowledge, has any piece of legislation been given so misleading a name. The truth is that it should properly be called the Landlord Enrichment Act. It'll make tenants poorer and landlords much richer, and that is for sure.

Far from giving tenants greater protection, it'll do precisely the opposite. It'll strip tenants of many of the vitally important rights that they now enjoy. The ultimate goal is to sentence rent control itself to a slow death by strangulation.

New buildings now are covered by rent control only after five years. Under the new act, they would remain exempt forever. A more immediate and crucial blow is the provision that vacant apartments will become exempt from rent control and a landlord will be able to charge whatever the traffic will bear. Controls will go back after the apartment is rented, only to be lifted once more if the apartment becomes empty again. Seventy per cent of all tenants move every five years, so you can see that it won't be long before most of our housing is out of rent control.

Will this encourage landlords to harass tenants into moving? That is the \$64,000 question, isn't it? Probably, even though an anti-harassment provision has been included in the new legislation. Of course, such provisions are usually beyond the tenant's ability to enforce them. For instance, I recently had to resort to the human rights act to obtain \$7,500 for a group of women who had been charged key money. It took me two years to win that case.

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The government also intends to get rid of the rent registry which provides the tenant with the only means to find out if the rent is the legal rent. This will make life easier and much more profitable for the unscrupulous landlords.

The plan also is to raise the limit on how high the rents can be increased. I can tell you, the sky's the limit.

At present, no legal rent can be increased by more than 3% a year above the rent control guideline, which is 2.8% for this year. The government intends to allow up to 4% above the guideline for repairs and maintenance. Above and beyond that, rent controls will also be increased to allow for increases in the property tax and in the utility costs.

Does any of this strike you as a tenant protection package? The Orwellian audacity of it all boggles the mind.

Rent control, as you know, was introduced in 1975 because of a critical shortage of rental housing. This act will profoundly deepen the housing shortage.

The Rental Housing Protection Act is also to be scrapped, and this will bleed the existing affordable housing stock. This will make it easier for landlords to demolish buildings, to convert them to condominiums and equity co-ops, or to evict all tenants on the pretext that the building needs to be emptied for major repairs. Just like the good old days. To make any of these changes at the present time, a building owner must obtain permission from the municipality, and this is very hard to obtain. The removal of the Rental Housing Protection Act would result in substantial loss of rental housing units in the city of Toronto. From 1968 to 1985, 1,929 rental units were lost in the city through conversion to condos. Since the Rental Housing Protection Act was enacted in 1986, only 20 units have been lost.

I know the value of this act because it was legislated as a result of my work in trying to save apartment homes from conversions or demolition. David Peterson saw the vital importance of it and assured me he would pass such an act if he ever became the Premier, and of course he did.

Last April, Housing Minister Al Leach promised "to make it easier for landlords to evict tenants." This new legislation will help him to keep that promise. For one thing, rising rents will force economic evictions. How can the minister offer a Tenant Protection Act when he has already proclaimed that his goal is to make it easier for landlords to evict tenants? And you'll see that in the clippings I've given you that I've Xeroxed from the *Globe and Mail*.

In a Toronto Sun interview, Mr Leach said landlords require "financial incentives" to encourage them to build new housing. That's nonsense. They already make huge profits. During the last 10 years the apartment sector of the economy has delivered a 10% return on investment. That is higher than all other sectors of our economy. I quote from the *Globe and Mail*, July 2, 1996:

"According to the Russell Canadian Property Index, a highly respected gauge of investment activity, Ontario's apartment sector has delivered a 10% annual return on investment over the past 10 years, outpacing all other sectors, including retail at 9%; industrial, 8.4%; office, 5.2%; and mixed-use projects, such as Toronto's Eaton Centre, 3.4%."

It is unseemly for the minister to plead poverty on behalf of the landlords. But even were we to lavish more profits on them, would they spend more on housing? No, of course not, because the rents they would have to charge on new apartments would be so high that tenants could not afford to pay them. The Canada Mortgage and Housing Corp has estimated that a Toronto developer would have to charge a monthly rent of \$1,100 for a new two-bedroom apartment just to break even.

Tenants are victims of a cruel hoax. Landlords will do nothing to solve the housing problems because the cost of land, financing and construction makes it uneconomical

to build. Landlords spread the lie that rent control stopped the building of apartments. The truth is that the building stopped as early as 1972, three years before rent controls became effective.

In closing, I want to say that I have publicly said the government is about to throw tenants to the wolves, and that is the truth. Higher rents, less security of tenure and the loss of vital rights will lead to dire social consequences in the city of Toronto. There are 166,290 tenant households in the city, or 62% of all households in the city which are tenant households. Tenants are not a special-interest group. They are a majority interest group and will not be denied. Governments may come and go, but the people, tenants and homeowners, go on forever.

You might ask, what do tenants want? The answer is, they are satisfied with the present rent control legislation. I have yet to meet one tenant who wants to surrender that protection. The rent control system is not broken, so don't fix it.

The Chair: Mr Marchese, we're faced with the one-minute challenge again.

Mr Marchese: Well, then, I'll just have to make a statement and congratulate city council for doing what it's doing. I'm almost afraid to congratulate you, because when you do that in the opposition you worry about what the government members may want to do about punishing the city of Toronto.

I think you have taken an important step as a council in terms of committing money which Mr Tabuns has already mentioned was in the order of \$250,000, to a question put by Mr Tilson. But I think you as a council have a social responsibility to do what you've done, and you're unanimous in this. Everybody knows that it's not just one political party at the council of the city of Toronto. You are all of different political parties, and it is telling that you should be unanimous in your support for tenants' rights and that this proposal, called the tenant protection proposal, doesn't do it; in fact, it hurts tenants. I for one want to thank you for the position you've taken.

Mrs Ross: My question is to Mayor Hall. In reading your comments here, you stated that "people have to move; in fact mobility creates a healthy housing market," and then you state that "70% of tenants move once every five years." I'm just curious to know how you can say that it creates a healthy housing market and we have such problems with housing if tenants are moving so often. Doesn't that sort of contradict what you're saying?

Ms Hall: No. I think people move because their family size changes, so they move to smaller units or they move to larger ones because their family has expanded. They move because they've secured a job in another community or —

Mrs Ross: I understand that, but —

The Chair: Thank you, Mrs Ross. Mr Curling.

Mr Curling: I sometimes have mixed feelings about this consultation process because some of the things that the mayor and Ms Gardner have said, and the council, that you advocate, are so important. My wish, Mayor, was that the minister would find it within his realm to be here to listen to this. As I said, he made his presentation and scooted out of here so fast and called it consultation.

I want to commend you too, and to carry on the fight for rent control. I think, as the question was asked of my colleague just a minute ago, maybe a minute or two to explain to her how it can help, and that has been denied because the process restricts us all to express that. I hope some day we have a proper consultation and a proper discussion about housing policy and strategy. Thank you very much.

The Chair: Thank you, Mr Curling, and thank you, Mayor Hall and Councillor Gardner. We appreciate your presentation and your interest.

1640

TENANT ADVOCACY GROUP

The Chair: Our last presenter for the afternoon is the Tenant Advocacy Group. Good afternoon, gentlemen. Welcome to our committee.

Mr Jack de Klerk: Thank you, Mr Chairman. My name is Jack de Klerk, and with me is Joe Myers. We're presenting a submission on behalf of the Tenant Advocacy Group. Our submission has been filed with the clerk, and it goes on for some 30 pages. We hope that most of the committee and certainly the ministry staff will find the time to read it, because it's very detailed and covers a lot of important areas.

The Tenant Advocacy Group is made up of lawyers and community legal workers who work in legal clinics mostly — some members of the private bar, myself included — and we represent tenants in their disputes with landlords. We've been active in this work for going on 20 years, since rent regulation was first introduced in this province, and we have a history of consulting with various governments and committees on various aspects of rent regulation. So we bring to our presentation a depth of experience that I hope you will recognize and consider as you go through our brief.

We're very disappointed in the paper. Obviously the proposals don't address the concerns we have, and we don't think they really protect tenants as New Directions indicates. What's at least as important, however, is that the paper doesn't reflect much careful thought about issues that are extremely important to tenants. There hasn't been a lot of discussion on these major issues, and we would hope some public discussion would follow.

The issues are difficult, no doubt. However, everyone would be better served if we had the discussion first and then developed the legislative proposals later. Instead, we get doublespeak and obfuscation.

New directions for tenant protection are needed, it is alleged, because the shortage of affordable housing is the byproduct of the imbalance of power in favour of tenants. If evictions were easier and rent controls were removed, the argument goes, investors would build the housing that is needed.

The real truth that the government's New Directions refuses to address is that in many cases rents are already too high. Tenants are paying too large a portion of their income on rent, rents are substantially discounted or units sit vacant. So taking off controls will not produce the great amounts of capital for new housing, and there is no reason to believe that any additional capital would in fact

go into new rental housing construction rather than other forms of investment literally anywhere in the world.

The objectives of rent regulation are that new housing would result from decontrol and presumably from the elements of removing the Rental Housing Protection Act, that there would be cost savings and, as the ministry staff has indicated, that the concept or issue of rent be separated from maintenance.

Unless there is real evidence that higher rents will lead to more housing being built, a rent control strategy to allow rents to increase substantially will be disastrous. Rent control will become an income transfer program from tenants or, if the government gives in to the demands for a generalized shelter allowance program, from the government to landlords. Tenants will have to pay even larger proportions of declining incomes to their landlords, for no obvious benefit in return either to themselves or to society as a whole. Society will be pressured to cover the costs through shelter allowance payments and to create the programs to address increased homelessness, overcrowding, higher food bank usages, more domestic abuse and a whole raft of other consequences of inordinately high rent and poverty.

If costs are going to be reduced, rent control needs to be simplified. Complex legislation with seemingly endless exceptions and provisos is a breeding ground for confusion, bureaucracy, legal wrangling and unfairness. One increase per year based on inflation, no exceptions, will work if we're prepared to commit, in a separate arena, to a repair and replacement program.

Like most anything else that consumers buy, the quality of housing tenants pay for must be related to the price. Rent and maintenance cannot be separated. Landlords are entitled to their rent in exchange for good maintenance and full services. Tenants need to be able to get fair compensation from landlords who do not properly maintain their buildings or reduce services.

It is commonplace that a very big issue facing tenants today is poor maintenance. In order to address that problem, we have to have the right incentives. In the past, programs have attempted to use cash handouts to landlords. The current system, which is a 2% increase in rent that's built into the annual guideline, is there also to encourage more maintenance. Neither of those systems really seems to work.

Properly directed incentives are the most effective way of ensuring that buildings are maintained. Maintenance and rent are two sides of one coin. Allowing tenants to get rent freezes, substantial rebates or compensation if and when maintenance falls below acceptable standards or services in facilities are reduced or discontinued is the only inducement, other than cash handouts, that will encourage landlords to maintain their buildings properly. Any other approach results in reverse incentives and is next to impossible either to monitor or to supervise.

I suggested that we have to go to another arena to address maintenance and repair problems. There has been on the table — more or less on the table; somewhat off the table — a suggestion for some time that we look at a province-wide building maintenance and replacement reserve. That discussion has never really taken place. The province should undertake a significant study of the

repair problems in multi-unit residential rental properties and it should thoroughly consider whether a province-wide reserve fund is workable. The estimates that have been thrown about are that we need in the neighbourhood of \$10 billion to do all the repair work in the province.

If higher rents are going to address that problem, then you have to look at very significant rent increases. There are approximately three million tenants, more or less one million rental households, rental units, in the province. If they were to each pay \$7,000 a year in rent, that would give you \$7 billion annual rent paid by tenants to landlords. The repair costs are \$10 billion. How much do you have to increase the rent to address that problem? It's boggling, and it's much more than the double-digit rent increases that the minister said he wouldn't find acceptable. Some other way of addressing that problem has to be found.

Mr Joe Myers: I would like to address my comments to the committee basically dealing with four matters that are raised in the discussion paper *New Directions*: (1) part IV of the Landlord and Tenant Act; (2) dispute resolution mechanisms; (3) security of tenure as it relates to the Rental Housing Protection Act; and (4) care homes.

With respect to the Landlord and Tenant Act, the Tenant Advocacy Group acknowledges that the act at present is not perfect, although we would submit that the act is successful largely because it recognizes the historical inequality that exists in the relationship between landlord and tenant.

To the landlord, the relationship is merely a commercial relationship and it functions, to a landlord, pursuant to the rules of commerce; to a tenant it's a totally different matter. A tenant is paying for a home and a roof over his or her head. The marketplace alone cannot provide protection for tenants. It needs to be codified under statute, and our submission today is that the Landlord and Tenant Act as it presently exists does an adequate job, not perfect, of doing that.

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Any change to tenant legislation, we would submit, would have to incorporate the following provisions. Security of tenancy would have to be included in any new legislation. What I'm talking about is that there have to be limited, statutorily enumerated grounds for eviction. They have to be specified grounds that tenants know about. Tenants should only be involuntarily dispossessed or evicted from their homes for specific breaches that are outlined in the legislation. Any change to landlord and tenant legislation that does not provide for security of tenure is not protection for tenants. There must also be included a remedy for abatement of rents to tenants to compensate them when landlords are inadequately maintaining and failing to repair their units.

Presently section 94 of the Landlord and Tenant Act recognizes this right and allows tenants a remedy to pursue in Ontario Court (General Division) to obtain abatements. They can also obtain under this section judgements from a court compelling a landlord to fix and do maintenance repairs. Any new legislation should also include a summary procedure. The Landlord and Tenant Act is adequately effective in that it provided summary procedure, a quick process by which tenants know what they're getting into when they go to court.

New Directions addresses certain issues that we take issue with and have very serious concerns about.

Specifically, we are concerned about the proposal of a system that would permit a landlord to prevent a sublet by a tenant in order to have the unit decontrolled, in other words, so a landlord can charge a rent to an incoming tenant at any rate he or she wants. We think that any changes to legislation should include protection for sublets and assignments of leases and should specify the difference between the two.

We agree with the submissions in New Directions that there are very serious concerns regarding privacy. Privacy is a very serious issue for tenants and one that often comes up. We ask that any legislative changes in this area would specify what reasons are permitted in which a landlord could enter a tenant's unit.

As stated by Mr de Klerk, the move towards vacancy decontrol is one we take issue with largely because we think it could lead to tenants being harassed. Tenants will be harassed by landlords into leaving their units simply so landlords can rent the unit out to new tenants at any rate they want. This is simply unacceptable.

With respect to dispute resolution systems, the present system, although not perfect, is satisfactory. We disagree with the assumption in New Directions that the present dual system, with rent control applications to the Ministry of Housing in the landlord and tenant court under the Ontario Court (General Division), is too confusing and too complex. We acknowledge that there are delays in the system, but in our submission these delays are largely due to understaffing, both with judges and administrative staff. Simply setting up a new tribunal to address these inadequacies will not guarantee a more efficient, faster and easier system that tenants can deal with. If systems are underfunded to begin with, as in the present case, whatever system that's put in its place, given the same level of funding, is doomed from the start.

New Directions makes it clear that this government wishes to take the dispute resolution system out of the courts. If that's done and a tribunal is established, we would submit that certain provisions need to be addressed. First, decision-makers must be competent; they must be trained; they must be independent from government appointment. Moreover, they must be representative of their community.

Mediation should be made available to tenants under this new system, but the mediators should be trained, they should be sensitive to tenant issues and they should be well versed in tenant matters and recognize the historical inequality in the landlord and tenant relationship. Most important, mediation has to be voluntary.

Any dispute resolution system that is brought into force has to be accessible in terms of the hours it's open, where it's located and what forms and procedures it adopts. As you've heard from many tenant groups speaking to you today, the overwhelming majority of

tenants in landlord-tenant court are unrepresented; the overwhelming majority of landlords in landlord-tenant court are represented. The new system that is adopted should recognize this and make the court or whatever is in its place easier for tenants to deal with.

With respect to security of tenure and the conversion of rental property, we would submit that the Rental Housing Protection Act in its present form is satisfactory. It does not need to be repealed. It is essential to any tenant protection package that there be limits on conversions, demolitions and extensive renovations. Without such limits it's our fear that uncontrolled conversions, demolitions and renovations will occur to reduce the amount of housing stock. A reduction in the amount of housing stock in simple supply and demand economics will mean that more tenants will be competing for fewer units, which will result in higher rents, a situation that's simply unacceptable.

The Rental Housing Protection Act in its present state is key in providing tenants with this security of tenure. In the event that municipal approval is granted for a conversion, tenants are entitled to notice so that they know what they're getting into. This security of tenure is the essence of any tenant protection package.

New Directions states that a major objective is to build new rental housing stock and suggests that it will be built if municipal approval is not required. We would submit, as many groups have before you today, that's not the case. There are many factors that go into the construction of new buildings and there are many factors that prevent the construction of new buildings or certainly make it more difficult, not the least of which are taxes, GST, development costs, Planning Act applications and the expenses associated with them. All of these create a very difficult environment for investment. Simply repealing the Rental Housing Protection Act will not present a more receptive environment.

Finally, with respect to care homes, we would submit that the Residents' Rights Act, which was proclaimed nearly two years ago, in its present form is satisfactory. The Residents' Rights Act is vital in that it protects the most vulnerable in our society. To eliminate any provisions in that act which might lead to fast-track evictions of our most vulnerable would simply be unacceptable. The act is in place, and we would submit it's doing the job as it presently stands. To make any changes to that is unnecessary.

Those are our submissions, subject to any questions the committee may have.

The Chair: Unfortunately you've used up your full allotment of 20 minutes, and there's no time for questions. We appreciated your presentation this afternoon and your involvement in our process.

The committee stands recessed until 1 o'clock tomorrow.

The committee adjourned at 1700.

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**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr Dave Boushy (Sarnia PC) for Mr Stewart
 Mr Alvin Curling (Scarborough North / -Nord L) for Mrs Papatello
 Mr Gerard Kennedy (York South / -Sud L) for Mr Grandmaître
 Mr Bruce Smith (Middlesex PC) for Mr Flaherty
 Mr David Tilson (Dufferin-Peel PC) for Mr Tascona
 Mr Wayne Wettlaufer (Kitchener PC) for Mr Young

Also taking part / Autres participants et participantes:

Ms Marilyn Churley (Riverdale ND)
 Mr Tony Silipo (Dovercourt ND)

Clerk / Greffier: Ms Tonia Grannum

Staff / Personnel: Mr Jerry Richmond, research officer, Legislative Research Service



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Official Report of Debates (Hansard)

Tuesday 20 August 1996

Journal des débats (Hansard)

Mardi 20 août 1996

**Standing committee on
general government**

Rent control

**Comité permanent des
affaires gouvernementales**

Réglementation des loyers d'habitation



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENT

Tuesday 20 August 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Mardi 20 août 1996

The committee met at 1302 in room 151.

RENT CONTROL

STRATHCONA MEWS LTD

The Chair (Mr Jack Carroll): The first presenter this afternoon is Phyllis Dutchak, president of Strathcona Mews Ltd. Welcome to our committee. You have 20 minutes. Questions, should you allow the opportunity for them, would begin with the government. The floor is yours.

Ms Phyllis Dutchak: Hello. My name is Phyllis Dutchak and I'm here acting on behalf of Strathcona Mews, where I serve as president on the board. Strathcona Mews is a 30-unit equity co-op townhouse complex located in the city of Toronto. We are having extremely serious problems because we lost our only source of financing and there is no other source available to us. Strathcona is a co-op and we cannot obtain title to property; we can only get shares. Because we have shares, no financial institution will accept us. They demand that there be title to property.

In 1989, the National Bank decided to accept co-ops and we signed on with it. It took two years for our lawyer to work through a series of internal papers, plus working with the National Bank, and we ended up with a legal bill of more than \$250,000. But less than three years later the National Bank decided to get out of co-ops. They notified our solicitor and told him that we'd better look for another source of financing. Since the National Bank stopped going into co-ops, it has stopped refinancing new purchasers. This makes it extremely difficult for anybody to sell their unit.

The big worry is, will the National Bank pull out completely? If that is the case, we have no source of financing. We have spent hundreds and hundreds of hours and we've been turned down by all official sources: banks, trust companies and so on. The only source we would have would be a loan shark and we don't want to get into loan sharks. I work for the Small Claims Court and I know about loan sharks.

We filed an application to have Strathcona converted to a condominium with the city of Toronto and we briefed the city of our situation beforehand. We also have renters at Strathcona and we discussed our dilemma with the renters. The renters all agreed to our converting to a condo and they signed a document to that effect. We, in turn, provided the renters with several years of guaranteed rental occupancy without any attachments and the renters agreed to it. However, the city of Toronto has a policy of not allowing conversions unless the vacancy

rate is 2.5% for two six-month periods, which is really for one year. With rent controls in effect there are no rental buildings being built in Toronto, so we're caught in a catch-22 situation.

At the neighbourhood meeting our case was lost because the city councillors voted against us. They recommended that we get a long-term lease through the CMHC. The CMHC agreed to that, but no financial institution would accept it because, again, they want title to property. They will not accept a property that has shares. I spent several hundred hours of my own personal time on that and got nowhere.

All the other municipalities in the area, such as North York, Scarborough, Mississauga and Guelph, allow condo conversions because they know that's the only way you can get financing. The city of Toronto is the only municipality that is holding out and we are paying very dearly for this. We are therefore strongly urging that buildings be allowed to convert without municipal approval because in our case it is Toronto that is holding Strathcona back from being converted to a condo.

Our lives are on hold right now. We can't move; we can't sell; we can't do anything. At present, we are living with a great deal of fear and anxiety. The National Bank can stop renewing our loans at any time and we'll have nowhere to go. This is very worrying, not knowing what will happen to us. Surely in 1996 this sort of thing should not be happening in the progressive province of Ontario. Surely we are entitled to have a roof over our heads. We do not want to be victims. Should the National Bank call our loans, we will have to leave our homes just like the characters in the *Grapes of Wrath*, what John Steinbeck wrote about in his classic novel.

Besides Strathcona there are about 20 or so other co-ops and co-ownership buildings in the city of Toronto that are also experiencing serious problems getting financing. This financial problem for co-ops must be addressed. The only way to address it is to allow them to become condos and at the same time make sure that if there are any renters in these buildings, the renters be well looked after. It is only fair that the renters be considered as well as the owners. Most of us who live in Strathcona had been renters before we bought our units, so we know both sides of the picture — the rental picture and the owner picture. Therefore, we want to be fair and reasonable.

We have to get this problem solved. It is very unfair that in the past several years industrial, commercial and even warehouse buildings have been allowed to convert to condos, but Strathcona, a residential building, has not been allowed to do so. The city of Toronto is discriminating against allowing Strathcona to become a condo

whereas it is allowing other buildings to become condos. That is not fair. We urge that the minister in charge of housing pass legislation that would allow co-op buildings such as Strathcona to convert to a condominium without municipal approval so that we can finally get on with our lives.

It is very difficult at the present time for us to function because technically we've lost control of our buildings. Because the National Bank has withdrawn its financing, if a unit owner doesn't want to pay their maintenance payments, there's nothing we can do about it because we can't sell the unit. We're left high and dry. It is extremely stressful. This problem of financing has to be resolved and that is why I am here today, to bring you this brief. Also, I've supplied you with a copy of a letter we sent to the minister. I'm open for questions, if there are any.

1310

Mr David Tilson (Dufferin-Peel): Thank you for coming to speak with us this afternoon. The paper that was prepared that this committee is reviewing — I suppose you've had an opportunity to review it — states that one of the components of rental housing protection in the proposed tenant protection package is that demolition, major renovations and conversions of rental buildings to condominiums or co-operatives will no longer require municipal approval. I assume from your presentation you obviously support that.

Ms Dutchak: Oh, absolutely. That's what I'm here for.

Mr Tilson: The mayor of Toronto was here yesterday. They've spent \$250,000 to fight this whole package that we're putting forward. I find rather shocking that a municipality such as Toronto would spend that kind of money. They came forward with no constructive comments. They made no comments with respect to this issue. All they seem to be doing is spending money on buttons and hiring consultants and other such things to fight this legislation.

One of the questions the paper asks is, "Should majority tenant approval be required for conversions?" Do you have any thoughts on that question?

Ms Dutchak: We contacted all our tenants where we live and all of them were in agreement. I can produce copies of where they signed documentation that they were all in agreement. It's very important to talk to the tenants and work out a deal with them. Tenants are reasonable. Until I bought into Strathcona, I was a tenant all my life.

Mr Tilson: My question really is, should there be majority approval, should there be two-thirds approval? What sort of percentage approval should there be for realizing on a conversion? Have you put your mind to that? Perhaps you haven't put your mind to that.

Ms Dutchak: In our case, it was majority approval.

Mr Tilson: So you feel majority is satisfactory?

Ms Dutchak: More, 51%. I think that should be fair. I really feel that you have to look after the tenants as well as the owners. I want to be fair about this. We don't want just to allow conversion. We want to make sure the tenants are looked after too because they're just as important as we are. We get along very well with our tenants. We've invited our tenants to our board meetings.

Mr Tilson: Thank you very much for coming to us this afternoon.

Mr Ernie Hardeman (Oxford): Going on with Mr Tilson's question, have you given any thought to, when you have 51%, what type of conditions should be in the proposal to protect the other 49% who aren't able to or don't want to be owners but are presently tenants? How would we protect their —

Ms Dutchak: Their interest?

Mr Hardeman: Yes, that in fact they would not be out of the building because the building was all condos.

Ms Dutchak: Perhaps it should stipulate in an internal agreement that they cannot be forced; give them so many years of minimum occupancy, to begin with — I think that should be reasonable — so that the tenants know they're protected.

Mr Mario Sergio (Yorkview): Ms Dutchak, I guess your problem is not with the city of Toronto but with the government itself, because if the government were to provide sufficient affordable housing where the vacancy rate would be 1.5%, 2% or 3%, then probably the city of Toronto would say, "Sure, let them go and convert their buildings." But if we're listening to the government side, just be patient for a few months because they will be doing exactly what they did with previous legislation. They will pass this legislation and then you'll be home-free to convert your building to condominiums. Having said that, this will come to pass as well because the mandate of the government is to do certain things. They will be doing exactly that.

Did you offer the units to the tenants?

Ms Dutchak: Yes. We've been trying desperately to sell off units.

Mr Sergio: I'm not saying if you tried to sell them. Do you have 100% agreement?

Ms Dutchak: From the tenants? Yes, we have 100% agreement, signed agreements.

Mr Sergio: And the city still says no?

Ms Dutchak: Absolutely, and we had a hearing on this. That's the article, after the hearing. Yes, we had 100% agreement from the tenants, and the developer we sold to offered all the tenants in the building one year's rent towards down payment on the unit. He was a very reasonable man. Anyone who's a tenant could have bought into that place. Actually, although the requirement was 25%, which is normal for co-ops, I think he was even going to go lower than that with them. All the tenants at Strathcona had an opportunity to purchase their units. It was a very fair deal.

Mr Alvin Curling (Scarborough North): Doesn't the law state that you have to have a certain occupancy rate before you can be a condominium?

Ms Dutchak: Yes. In the city of Toronto a vacancy rate of 2.5% for two six-month periods.

Mr Curling: You have not reached that.

Ms Dutchak: Pardon me?

Mr Curling: You have not reached that level?

Ms Dutchak: Oh, no. There's no way we could reach it with rent controls.

Mr Curling: I don't know if rent control has anything to do with that part of it, really.

Mr Tilson: Sure it does.

Mr Curling: Let me do the questioning. It has nothing to do with it. We're talking about occupancy levels.

Mr Tilson: Tell her how it doesn't.

Mr Curling: Maybe I should ask you the questions then.

The Chair: Mr Curling has the floor, gentlemen.

Mr Curling: Yes. They're so defensive. Go ahead.

Ms Dutchak: The city of Toronto has a policy that it will not allow a building to convert that has renters in it, unless the vacancy rate according to CMHC rental figures — they collect figures — is 2.5% for two six-month periods, over a 12-month period. Unless that is so, the city of Toronto will simply turn it down and that's what happened to us.

Mr Curling: Likely so, but all those who are in that condominium had come into that condominium, the co-op, in order to buy later on, is that it?

Ms Dutchak: A number of the people were renters. Quite a few people were renters and then the developer wanted to get out of the building, he wanted to sell off the units and he gave them a wonderful deal, really a deal of their lifetime and some of them bought into the units. There are others like me, I saw the ad in the paper and I bought into the units, the first property I've ever owned.

Mr Rosario Marchese (Fort York): I just want to make some comments with respect to the city of Toronto and their submission here yesterday.

I, for one, was proud of the submission they made, very happy that a diverse group of politicians, very Conservative, very Liberal and very NDP, came here unanimously condemning the proposal and supporting rent controls. It's very telling that a group of politicians from diverse political tendencies came here to convince this government, even Conservative members, that what they're doing is wrong. The fact that they're spending money to protect rights of tenants I think was very responsible.

You see, we're worried about the fact that poor people can't pay any more. Overall, this general package that they are presenting which purports to support tenants does the exact opposite because what they're not saying is that 70% of all tenants within five years will move. Every one of those units, once they move, will be subject to an increase. That's what they're not telling people. Well, maybe they are, but they don't think people understand. So I'm worried about them.

I understand your own personal situation, but as a politician I worry about what happens to poor people who cannot afford the increase, first of all. Secondly, in your paper you talk about the fact that rent controls in place, however, make it impossible for developers to build rental buildings. You make that as a statement of fact.

Ms Dutchak: Why aren't they building?

Mr Marchese: They're not building because they're not making any money in it unless governments make it possible for them to build, meaning you cut taxes, federal capital tax, you cut the GST and so many other things they want on the red carpet, as one individual came here to say yesterday. If you do all of that, as they are prone to want to do, then they will build. Why would you give the store away to builders? Why wouldn't you do it as a government when you can do it more responsibly, we argue. They argue not, because they want the private sector to do it all.

But I wanted to challenge the statement that says the developers are not building because of rent controls. That's not true. So I wanted to present that view.

With respect to your own case in this issue, we're very concerned that when you allow the developer to do what he or she wants, what you in effect will do, for the most part, is to take rental accommodation that many can afford out of the market once again, further squeezing what is available to be rented out to people who can't afford to pay any more than they're paying.

As far as you're concerned, it's a great deal that was being offered here and there's a whole heap of people who've got money to spend on these things. There maybe are a few people who can continue to buy condos, but the majority of people can't afford it. So we want to protect the rental stock.

Now I understand your individual concern, but from my point of view I want to protect what's available for the majority of people who are losing their jobs, who are now working part-time, who are receiving much lower social assistance than ever before, when the economy's being weakened by their policies. I'm worried about what happens to the majority of the public. While understanding your own personal matter, we have to balance out the greater public interest with individual interest, which sometimes may be in conflict, I agree.

The Chair: Thank you very much for your presentation. We appreciate your being involved in the process.

I would like to just caution the committee that we are basically here to hear the presenters, not to argue back and forth with one another.

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ONTARIO HOME BUILDERS' ASSOCIATION

The Chair: The next presenter represents the Ontario Home Builders' Association, Ward Campbell, the past president, and Andy Manahan, director of industry relations. Welcome to the committee, gentlemen.

Mr Ward Campbell: Thank you and good afternoon. My name is Ward Campbell. I am immediate past president of the Ontario Home Builders' Association and I continue to serve on the Ontario Home Builders' Association executive committee. With me is OHBA staff member, Andy Manahan, who is director of industry relations. I'd like to note that Stephen Kassinger, a member of the OHBA's board of directors, had intended to participate today but was unable to attend these hearings. Instead, we've attached an article which Stephen wrote for the Ontario Home Builder magazine.

The Ontario Home Builders' Association represents 3,400 member companies involved in Ontario's residential construction industry. Our membership is made up of all disciplines involved in residential construction, including builders, land developers, renovators, trade contractors, apartment owners, property managers, mortgage lenders, housing consultants, economists, planners, architects and engineers, and lawyers. Together, we produce 80% of the province's new housing.

In addition to meeting the demands of people who have chosen to purchase their own homes, our members address the needs of those who choose to rent. Whether

through construction or property management, we have endeavoured to provide the best quality rental accommodation possible.

We are pleased the government has recognized that the rent control system is in need of a major overhaul. The introduction of rent controls in 1975 and the tightening of rental legislation, particularly over the past 10 years, have severely diminished the incentive for builders to expand the stock of rental housing in Ontario. The Premier hit the nail on the head when he said a year ago during a radio phone show in Ottawa that marketplace rent control is the best rent control mechanism there is, and that's what we'd like to be able to move to.

While the proposed tenant protection legislation is by no means a market-based system, we believe it represents a step in the right direction. Cuts to the non-profit program last year were long overdue. Money was thrown at a problem but it did not solve the housing affordability situation. This provincial government recognizes that the private sector can build housing much more efficiently than the government can and wants the residential construction industry to return to building rental apartment buildings. OHBA members will play a major role in the resurgence of this sector under the right conditions.

The Minister of Municipal Affairs and Housing, the Honourable Al Leach, is well aware that without an infusion of new rental buildings, there is potential for a severe shortage of apartment-style housing in the greater Toronto market and in other urban Ontario markets. Last fall, the ministry commissioned a report that clearly spelled out the message which the provincial government, as well as the federal government, must take to stimulate new rental supply.

Housing consultant Greg Lampert's report, *The Challenge of Encouraging Investment in New Rental Housing in Ontario*, stated, "There is serious doubt whether relaxation of rent controls will in itself be sufficient to stimulate private rental investment on the scale required." We concur with Mr Lampert's opinion and can point to a number of pro formas which were contained in his report to show the difference in project development costs, annual revenues, costs and net income for the potential buildings in Toronto and London under different scenarios of taxation.

These are generic pro formas but they illustrate that there exists a gap between the economic and market rents. In Toronto, the gap between economic and market rent is approximately \$260 per month, using typical land, construction and other costs. In other urban Ontario markets such as Kingston, Hamilton or London, the monthly gap would be about \$150 a month, depending on the actual costs.

This gap exists largely due to various taxes, such as development charges, property taxes, and the GST. For instance, builders must pay 7% GST on the value of a rental building. By comparison, most single-family housing pays an effective GST rate of 4.5% after the rebate. Lampert's report lists how the financial and regulatory environment contributes to the gap and explains why what was once a healthy industry is languishing. Without the elimination of this gap and the

chance for a reasonable rate of return, no investor will proceed with new rental construction.

In our opinion, not all of Lampert's recommendations need to be implemented to spur the construction of rental. In fact, it would be naïve to think that one could wave a magic wand and correct a host of inequities simultaneously. To restore a sense of equilibrium to Ontario's distorted rental housing market will require time and patience. For example, we do not expect that the property tax inequities will be rectified overnight.

Rent controls have contributed to the distortion of Ontario's rental housing market to such a degree that even with ever-tightening vacancy rates there is only a dribble of units coming on stream. With vacancy rates of less than 1% in the Toronto CMA, or census metropolitan area, there were only 20 private units built last year. The provincial average vacancy rate for privately initiated apartment buildings was 2.1% during this period, but only 610 units were built in Ontario. This represents only 1.7% of the 35,818 total starts in Ontario last year. Ownership housing has been in the cellar for the past few years, but by comparison, private rental has been in the 100th level of the underground parking garage.

The new supply of rental housing has been dismally low when one considers Ontario's population growth and immigration levels during the past few years. Even if one factors in the spike in supply of non-profit housing, the role that investor condominiums played in supplying high-end rental accommodation, and the fact that there were families doubling up in the existing housing stock, it's startling how low Ontario's rental supply has been.

In contrast to our situation, the US new rental housing industry is alive and well. Of the 278,000 total multi-family starts in 1995, 65% were private rental starts, 18% condominium units and 18% tax credit units. The share of condominium starts is declining while private rental in the US is rising, and it is forecast by the National Association of Home Builders to continue to rise. You may be shocked to learn that this level of activity occurred with an average vacancy rate of 9.5% in 1995.

Committee members may be wondering what will be required for our rental construction industry to return to a healthy state. Must all of Lampert's recommendations be implemented? We do not think so. For certain investors, it may be sufficient for X number of Lampert recommendations to be fulfilled in order to create new supply, while for others the uncertainty regarding projected return on investment may be inadequate to proceed. But the change must be made quickly for a new supply to be built by the end of this century.

Other than the actual process leading to the investment decision, it will take at least two years to obtain planning approvals and complete construction. Therefore, urgency is critical.

Unfortunately, because of the dynamic nature of real estate investment, it's not possible to provide any estimates of future supply. What we can say is there will not be a surge in supply over the short term, even with the removal of rent control provisions for newly constructed units.

From a builder's perspective, OHBA's main concern is with encouraging new supply. As has been indicated, the

proposals in the discussion paper on their own will not result in a major infusion of moneys into new rental investment. There will be some activity in various centres, but it will not be on the scale which is required in Ontario.

The proposals, in our mind, represent a transitional program which will ensure protection against large rent increases for tenants. We believe that Ontario must move from this phased decontrol system — or, as some have called it, the decontrol-recontrol system — to complete removal of rent controls. It has been suggested that this be done within a specified time period such as the first term of this government. Such a signal would provide private investors with a greater degree of confidence that we are moving to a market-based system.

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In conclusion, we are supportive of the phasing out of rent controls, but we are not wholeheartedly supportive of the way in which this proposed package attempts to do this. As the Premier indicated, a well-functioning rental housing market is the best form of protection tenants can have. By facilitating a new supply of rental accommodation tenants would have greater choice and landlords, through competition, would be compelled to keep rents at a level the market will bear. In addition, to retain tenants there would be enhanced maintenance and conversion measures.

Having said that, we recognize that transitional measures are appropriate to acclimatize the industry, the public and the provincial government to a new system. We are confident that with time the apartment building industry can be resuscitated, construction jobs created and new supply built. We are confident that the public will be well served by a return to a market-based system and we are confident that the government need not spend a fortune, as it previously did, on social housing to house Ontarians.

Andy and I would be pleased to answer your questions.

Mr Curling: I listened to you carefully. I think you understand the complexity of the housing strategy that must be put in place for us to have a balanced supply of units for people who are not able to plug into the marketplace as it is now; in other words, affordable housing to be built.

You said you applaud the cancellation of the construction of non-profit housing. I wish I had about half an hour to discuss all that with you first because it's the private sector that really built it. What the government had done was they built a community, they just didn't build housing. What most of your industry has done is say, "Millions of dollars to build non-profit housing, taxpayers' money." Yes, it was taxpayers' money that built that community, and it should be.

On the other hand, you state that it is the right direction the government is going in cancelling rent control, and in other words you say, "Oh, don't do it so fast, please." See what happened? When the government cancelled out the non-profit housing and said to you, "Now deliver," you said, "No, we can't, and if we do, we'll deliver at the top end." What time should it give you to deliver affordable housing to the people of Ontario at the bottom end of the market? How long will it take you, your industry, to do that?

Mr Campbell: That would depend on how fast the government moves to get rid of rent control —

Mr Curling: Let's say they cancel it tomorrow.

Mr Campbell: — and to fix the tax base for property taxes, the federal government comes to the realization that the GST is not correct — there are a lot of things involved in it.

You talked about the non-profit program. We still firmly believe that was money not well spent, better spent on a housing subsidy allowance to let the tenants have their choice in the market where to move.

Mr Curling: So rent control is not the monster that you talk about then?

Mr Campbell: I didn't say that.

Mr Tilson: He didn't say that; don't put words in his mouth.

Mr Curling: This is a home builders' association member here; I'm asking him.

Mr Campbell: Rent control is a serious problem; it's one of the problems. There are a number of them that affect rental housing markets, as we all know. That is certainly the biggest one. If that is not eliminated and gotten rid of, you will not get the investment that's required to bring rental housing to Ontario.

Mr Marchese: Mr Campbell, what would have happened to your association and to the construction industry if the NDP hadn't been building cooperatives and non-profit housing in the last three or four years?

Mr Campbell: I think our association would have got along just fine without it.

Mr Marchese: No kidding? The only work in construction was what we were building; we were the only ones building.

Mr Campbell: That's not true. Your proportion was a small proportion of the starts in Ontario.

Mr Marchese: Small? So the private sector was building the major portion of the housing starts? The private sector was building the last three or four years?

Mr Andy Manahan: In 1992, social housing accounted for one third of the total housing starts, and that was the peak year.

Mr Marchese: What was the percentage?

Mr Manahan: Thirty per cent.

Mr Marchese: A small amount?

Mr Manahan: That was a very large amount. It was totally out of whack with what we should have been spending.

Mr Marchese: But it was very helpful to you?

Mr Campbell: I think we would have done just as well if we'd had a shelter allowance program in place in a healthy rental market without rent controls and the other problems.

Mr Marchese: I see. So if we had the shelter allowance, which we do — I mean, we have \$2 billion worth of shelter allowance; you already get that now. So you're saying that if we weren't building, you would have been building.

Mr Campbell: No, I said if we had a market-based healthy rental market.

Mr Marchese: How do you get that?

Mr Campbell: I think I stated very clearly how we get that.

Mr Marchese: How do you get that?

Mr Manahan: I can perhaps comment a little bit. I think what we're dealing with here, as Mr Curling previously stated, is a very complex issue. The rental market has been distorted by so much that it's difficult to say categorically what's going to happen, but in essence the rent control system has served to benefit higher-income tenants more so than lower-income tenants. If we had a true market-based system, those, let's say, higher-income tenants wouldn't be benefiting from it and they would be going to other accommodation.

Mr Marchese: What you're saying to people who are tenants is: "Don't worry. You're about to get an increase because as you move out they can charge what they want. But that's okay because the market will adjust itself and everybody will be all right." Is that what I'm hearing from you?

Mr Manahan: I guess you have to look at the number of units and the percentage of units which are below legal maximum rents, the types of household they are living in, rent-controlled buildings. There are a number of units across Toronto, for example, that are chronically depressed, that have been under rent controls for over 20 years. In some cases, those rents are \$400 and the household family income is \$80,000. Rent controls aren't benefiting the people they're intended to benefit. They're benefiting up —

Mr Marchese: So rent controls will benefit everybody is what you're saying?

Mr Manahan: No, I'm saying the removal of rent control will benefit everyone once we get a balanced system.

Mr Bart Maves (Niagara Falls): Thank you very much, Mr Campbell and Mr Manahan. You've mentioned one of the problems that Lampert points out — and we discussed it briefly yesterday with Toronto city councillors — the property taxes. I understand that property taxes in Toronto make up about 40% of the cost of the rent of a unit. Toronto city council, in your eyes and in Lampert's eyes, rather than spending money printing buttons and the like, would their time be better spent perhaps reapportioning their tax system so that there weren't such high property taxes on apartment buildings?

Mr Campbell: We'd like to see property taxes for rental units become more equitable. In the Hamilton area, where I come from, I pay two and a half times for a townhouse unit that I rent out than the ones I sell. It just doesn't make sense; they're getting the same service from the municipality. I think it's even worse in Toronto. It's a problem that has to be dealt with.

Mr Maves: I think it's 4.2 times as high in Toronto, which I believe to be a major portion of the problem in Toronto.

To me, Mr Marchese made a stunning comment, but since it was Mr Marchese, maybe it's not so stunning. He said that he didn't think you should be building. He didn't think we should make any changes so the private sector would build anymore. He decided that we should let the government do it because the government did it more responsibly. Is that your view of how the government built houses. Did they do more responsibly, more efficiently than your membership?

Mr Campbell: My view would be no, they did not. I can give you one example, and it's just one of hundreds. There was a project on the Stoney Creek mountain that was built under the NDP government. The MUP, which is the maximum unit price, on that project was \$124,000. It was a nice townhouse project. Within a block, a private developer was selling condominium units for \$99,900; just as nice a unit, just as nice a project, same location. You tell me how the government did that cost-effectively? Each one of those units cost the taxpayers of Ontario at least \$25,000 more to build, plus the carrying of it overall these years. It's just not efficient.

Mr Maves: That's in Hamilton, so you've heard stories about other cities.

Mr Campbell: Across the province I've heard stories like that.

Mr Maves: The other thing Mr Marchese tried to say to you was —

Mr Marchese: Please quote me as correctly as you can.

Mr Maves: — that if the NDP wasn't building your association, your members would be a lot worse off. Tell me if this is not a good analogy for your builders: You're making a product. You're making a fair profit over the years. You're complaining about high taxes but they keep getting higher. You keep making your product anyways. All of a sudden, the government decides to use those high taxes, those tax dollars to go into business and compete against you and now you lose your market share, you start to lose money and your profit drops. Isn't the incentive to get out of the business at that point in time? How would you handle that?

Mr Campbell: Yes, the incentive is to get out of the business. There's no question that a lot of the government projects were in direct competition, especially in areas outside of Metro Toronto and the rest of the province. I had people who were renting the market units at \$600 a month who could easily afford to pay \$1,000 and would have bought a house from me. I would have built them a unit; that unit still would have been built, only they would have owned it and they would have been better off in the long run.

The Chair: Thank you, gentlemen. We appreciate your interest in our process.

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ADVOCACY CENTRE FOR THE ELDERLY

The Chair: The next presenter is George Monticone who represents the Advocacy Centre for the Elderly. Good afternoon, sir. Welcome to our committee.

Mr George Monticone: I'm here on behalf of the Advocacy Centre for the Elderly, which is a legal clinic for low-income seniors funded by the Ontario legal aid plan. The advocacy centre's clients are those people 60 and over who are low-income. We are pleased today to have the opportunity to join with the government in its deliberations about landlord, tenant and rent control issues. We commend the government for conducting these hearings prior to draft legislation to better understand the many complex issues involved in the five or six pieces of legislation that affect landlords and tenants.

Today, I want to focus on care homes, which are but a small segment of the rental market, but an important one to seniors. In closing, I will also make some comments on vacancy decontrol as it affects all tenants.

What are care homes? I think they perhaps are the most misunderstood sector of the rental housing market. They're unlicensed facilities where some care is provided and that care is unregulated. Unlike nursing homes, which are licensed to provide care and accommodation to residents, care homes are neither licensed nor regulated with respect to care.

What are care homes like? They vary immensely. Some are large; some are very small. Some you might live next door to and not even recognize as a care home. Some have a few staff; some have many. Some are luxurious and some are, quite honestly, slumlike. What are the tenants like who live there? They vary immensely also from very high income tenants to the lowest-income tenants in the province. Some have health care needs that are quite many and complicated; others have no health care needs and seek out care homes simply because they want the convenience of meals and other services they may need in the future. People living in care homes vary immensely with respect to age. Some are younger persons with disabilities, and then of course there are many seniors.

Legislation was passed in 1994, the Residents' Rights Act, which brought care homes under the Landlord and Tenant Act, the Rent Control Act and the Rental Housing Protection Act. There was some question prior to that as to whether these types of facilities fell under that legislation. There was in fact a court case that said they do, but the Residents' Rights Act clarified that.

The legislation treats care home tenants the same as other tenants in Ontario with the same rights and obligations, but they have also some special rights, and it's important to understand what those are and why they're there. First of all, care home tenants are entitled to a written tenancy agreement. Other tenants have tenancy agreements, but they need not be in writing. There's a five-day cooling-off period. I won't pretend to second-guess exactly why this requirement was put in the legislation, but I believe it has something to do with the fact that care home tenants are vulnerable and they're contracting with their landlords for not only accommodation but for a range of services, and these are complex agreements. Hence, it is wise to have written tenancy agreements.

Furthermore, care home tenants are entitled to a care home information package, which we like to refer to as CHIPs, which sets out the legal rights of tenants who live in care homes, as well as a lot of very important consumer information that I'm sure any of us in this room would want to know if we were moving into a care home or if we were moving a parent into a care home.

Care home tenants are also entitled to a 90-day notice of increases in meals and services, and for each of these three things I mentioned — the written tenancy agreement, the CHIP and the 90-day notice — there is an enforcement mechanism so that the landlord is not entitled to raise the rent unless they happen.

The New Directions paper makes a series of recommendations with respect to care homes, and I want to comment briefly on virtually all of those. It suggests that security of tenure and privacy should continue, and that of course we welcome. It suggests that written tenancy agreements should be continued, and that is good because of the complexity, as I mentioned, of these agreements and the vulnerability of some of the tenants. There's no mention in the paper of continuing the five-day cooling-off period and the enforcement mechanism. I assume the government would have that in mind as the way of enforcing this particular requirement.

New Directions also suggests that the care home information package be continued, and we welcome that. We suggest that you consider a standard form agreement, which we've appended to our submission. That would be, I think, helpful to landlords and tenants in making what can be a fairly complex thing into something that everyone recognizes and understands.

The government is suggesting in the New Directions paper that rent control for accommodation be continued. We welcome that. Of course, there is the caveat of the vacancy decontrol, which I'll address in a minute.

It is also suggested in New Directions that a 30-day notice is adequate if a care home tenant must leave the care home because of health reasons, if they have a sudden illness, have to be hospitalized or, I might add, if they're on a nursing home waiting list. Often how that works is that the nursing home notifies you and you have to take the bed within two or three days. Hence, it would be very good to have a shortened 30-day notice of termination for care home tenants. Of course, I'll add that landlords are always free to waive 60 days or 30 days if they so wish.

The New Directions paper suggests that there be a right to enter to perform bed checks or care. We believe that right already exists under section 81 of the Landlord and Tenant Act, which provides for care home agreements and agreements to provide care. However, there are people who read the legislation differently and it would be welcome to clarify this point to make sure that where landlords and tenants agree, the landlord should be able to come in at night to check on someone and that this kind of agreement could be carried out without any sanctions.

We urge the government to make sure that in allowing that and clarifying that, it is also clear that landlords not have the right to enter for any reason whatever; that it be legitimate and having to do with the care needs the tenant has contracted for.

There is also a suggestion in New Directions that operators of care homes be allowed to "transfer residents to alternative facilities when the level of care needs change, subject to appropriate protections." This one concerns us greatly, because I think at bottom there's a misunderstanding about this. It is not open to anyone to transfer someone into a nursing home or a hospital without the consent of the person who is going to be transferred. That is in legislation, the Nursing Homes Act. The Homes for the Aged and Rest Homes Act also says that the resident or an appropriate substitute decision-maker must consent to entry to those facilities.

So if I, as a care home operator, want to transfer someone to a facility like that because I believe they have higher care needs than I can provide for, I can't do it. I simply can't do it, because the legislation is there saying that the tenant's consent, the person going into the facility, must be there.

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We think that this particular proposal should not be implemented or, if it is implemented, that it be made absolutely clear that it only be done with the consent of the tenant or an appropriate substitute decision-maker as that's determined under the Substitute Decisions Act.

There is also in New Directions a proposal regarding fast-track eviction of tenants who threaten other tenants. I'm happy to say that I agree at least with this much of that proposal: that this be the only reason under which a fast-track eviction procedure be implemented, where other tenants are being threatened. Particularly in congregate living situations where tenants share facilities, they can't get away from each other and when they have someone who is aggressive and threatening, those are the situations, and only those I think, where a fast-track eviction should be considered.

We aren't supporting it, but neither are we opposing it. We say to you that if you hear from enough tenants' groups that this is an important protection for tenants, then fine, provided that there are sufficient procedural protections for the tenant who is being fast-tracked out of the facility.

Finally, I want to comment on vacancy decontrol as it's proposed in New Directions. If rents go up as a result of vacancy decontrol, seniors will be affected more profoundly than others, as they spend a larger share of their income on accommodation than other tenants. I have here with me something that just arrived in the mail yesterday, it's just been published, Facts on Aging in Canada, and it consists of StatsCan and other source materials with charts and so on. We have in here fairly clear evidence — and I'll leave a copy with the committee — that seniors spend a larger proportion on shelter than do other segments of the population. So they stand, it would seem, to be more affected by increased rents.

If the thrust of this proposal for vacancy decontrol is to encourage the building of more rental housing, that can be done more directly and more effectively, in my opinion, by tax incentives such as the removal of sales tax on building materials, income tax credits and so on. I think the sky is the limit as far as creativity in this area is concerned.

It need not be done, in effect, by punishing those with the least income through the introduction of mechanisms which, it seems, can only result in generally higher rents. It cannot be denied that this is the purpose of vacancy decontrol, since if it does not generally result in higher rents, I don't see how it can possibly provide incentives for building more rental accommodation.

Low-income seniors have recently been hit by increases in prescription drugs. Those with the lowest incomes, who are on GWA, general welfare assistance, or family benefits, have also suffered a 21% decrease in income. These people who are on fixed incomes simply cannot afford an increase in rent. The advocacy centre

receives calls frequently from seniors waiting for rent-geared-to-income housing. As we all know, the waiting list is increasingly long.

The approximately 32% of the population of Ontario who are renters include those people who are least advantaged, who have the lowest incomes and the least flexibility to do something about it. The government has a responsibility to see to it that those people least advantaged in society do not slip so far that they become desperate. If they become suicidal, if they resort to crime, if they suffer from depression and require more medical attention, we all pay and the quality of all of our lives, I believe, is diminished.

We don't want a society which allows seniors to become desperate, to become the target of abuse, harassment and exploitation. The responsibility is the government's to see to it that this doesn't happen. That responsibility must be taken seriously. It's important for the quality of life of everyone living in Ontario.

If there is a problem with too little rental housing, we urge the government to explore approaches to solving this problem other than vacancy decontrol. We encourage those with resources to build and prosper, but not at the expense of those with the lowest incomes. There must be solutions that allow everyone to win.

We at the advocacy centre are not experts on tax policy and building, but we do urge the government to consult with those who are to find that policy which will get the job done. Thank you. We're open for questions.

Mr Marchese: Thank you, Mr Monticone. Some of the concerns you've raised are things I sympathize with, and many sympathize with that view. Barbara Hall came here saying much the same when she said seniors, low- and moderate-income families, low-income singles, the hard-to-house, psychiatric consumers, new immigrants, single-parent families, and I would add students to this list, all of them are going to have a difficult time with this. It's not going to be "if" they get an increase; the intended proposal is for tenants to get an increase. I can't imagine decontrolling without the effect having to be getting an increase.

I'm just as concerned as you are, and many are too, that this will hit those most needy in society, and they are mostly renters. It will have an impact on them, so I hope your comments will have an effect on this government.

Mr Tilson: Your comment with respect to the transfer of residents to alternative facilities: You appear to support that as long as there is approval by the patient or the tenant or someone who has a power of attorney.

Mr Monticone: Yes. I guess it would be fair to say I would support it, but if there is approval by the tenant, there's no need for any special legislation.

Mr Tilson: The possibility of incidents where it might be appropriate because the institution or the facility simply doesn't have the resources, the personnel, to suit that individual's needs, and for whatever reason that person may disagree with that — would it be more appropriate, or maybe you have directed your comments to the questions that were asked: Should there be a formal process for transferring a resident of a care home to another facility? What would the transfer process be? How can residents be assured of getting the right kind of

alternative accommodation? Have you directed your thoughts to those questions?

Mr Monticone: Just in brief, I would say that the consent is necessary. That's our position. The consent of the tenant or a substitute decision-maker is necessary.

There can be situations where the tenant would disagree with the operator, that they don't want to move. I hasten to point out that in those situations the tenants are free to bring in care from outside the building. They do this now. Unless the landlord has some sort of rule that says you cannot make use of home care, which is a public service, or some other private agency for care, then it's open to the tenant who needs the care to get it that way.

Mr Curling: The New Directions that this government has put out is going to drive your people into some chaotic decisions to be made, because quite a few of the elders and quite a few of those who need care who are renting and whose rent will go up, sometimes seek refuge, I have to say, in your area. Many of them come with all of the other things that society has put on them — psychological, physiological and all manner of economic states — and then you provide the rest. I can see the great impact in that area.

It tells us how complex housing can be, because if the Minister of Health is not a part of this and many of the people who are maybe unsettled tenants, if you want to call them that, because of reasons, I do hope — it's unfortunate of course, and the Chairman has that challenge and all of us have the challenge that a well-presented paper like this needs almost an hour and a half to go into detail with you to understand, very much so, the challenges they face.

I'm just going to use those few seconds and say I think the paper is extremely well done and I hope we all have a chance to have a look through this and maybe to reflect in the legislation what they put forward to realize the impact it's going to have when we have that direction in changing the rent control legislation.

The Chair: Thank you, Mr Curling, and thank you, sir. We appreciate your involvement in our process.

1400

LORRAINE KATRYAN

The Chair: Our next presenter is Lorraine Katryan. Good afternoon and welcome to our committee.

Ms Lorraine Katryan: Good afternoon. My name is Lorraine Katryan. I'm here speaking to you as a small landlord. I have an apartment in my house. I've lived in that house for 15 years, and most of that time I've rented it out. I've also worked for over five years in the housing field, so I know a lot about the issue from both sides of the fence.

Most of the tenants that I get are great. They fulfil their end of the bargain and, like any consumer, they deserve to get a good product in good working order at a reasonable cost. I could come here and I could tell you that, sure, I want to raise my rent and, sure, I want to be able to get rid of tenants more easily, but that's not what I'm here to say.

I've given some careful thought to this issue, and knowing how the situation works from both the landlord

point of view and a tenant point of view, I'm here to tell you that I think these changes in this proposed paper are very shortsighted and very dangerous. I want to talk about what that's going to mean for landlords and for our communities from a broader perspective.

I don't think these changes you're proposing that are going to give broad advantages to landlords are necessary. That's the first point I want to make. I don't need to raise my rent. In fact, I don't even charge the maximum rent in my apartment, and that works better for me. I rent the apartment very quickly. I get great tenants. I have a good relationship with my tenants and I know that I'm not gouging them, the food off their tables, because they have an affordable place to live.

The current system creates a relatively fair balance of power between landlords and tenants. As a landlord I know I have more power than my tenant. I can evict my tenant; my tenant can't evict me. So I'm quite satisfied with the current legislation. It presents a level playing field, and I want to know that I can deal fairly with someone. I don't want to rent an apartment to someone who rents it out of desperation because they don't have any other alternatives. That's not the kind of business I want to run in my life.

If I'm a good landlord, I don't have to be afraid of the current legislation. I'm willing then to negotiate on a fair playing field, using fair business practices, as it is now.

Let me talk for a minute about rent controls. You say that removing rent controls will increase the supply of housing, but I think you're completely off on the wrong track here. The fact that there isn't enough housing isn't because there's rent control; the problem is caused by the huge jump in the cost to build. Land costs went up, construction costs went up, interest rates went up over the past 25 years, and that's why landlords don't build rental housing. The rents that landlords would have to charge just to break even if they did build new rental housing now, tenants couldn't afford to pay. If I were a tenant I couldn't afford to pay the average \$1,100 it would require for a landlord who builds a new apartment building to break even.

It's a red herring to blame rent controls for the lack of new rental housing. New apartment buildings were never covered by rent controls for the first five years anyway, even under the old system, and they still didn't build new housing. That should be your biggest indication.

You talk about maintenance as being a problem, and certainly from my work in housing I know that maintenance is a huge problem. There are landlords out there who just won't do repairs and are letting their buildings crumble around their tenants, and they don't care. But the main reason for bad maintenance is not because of rent control; it's because of bad monitoring and general greed among some landlords who take no pride in their buildings, who gouge high rents out of their tenants and invest in completely unrelated ventures that can easily be not only outside our communities but outside of Canada. They make me ashamed to call myself a landlord. That's not the kind of business I want to run.

If a landlord is responsible and interested in preserving his or her investment as a businessperson, they understand the value of protecting their investment, and many

landlords do understand that. What the province is proposing in order to ensure maintenance is to improve enforcement mechanisms and increase fines. That's all well and good on the one hand, but on the other hand the province is also proposing to take away the right to prohibit a rent increase, and on an ongoing basis we see the province reducing transfer payments to cash-strapped municipalities.

This is going to have landlords laughing all the way to the bank. They know that enforcement mechanisms and high fines are going to mean diddly-squat when there's no money for municipal inspectors to actually do anything about it. They know they can still get their annual rent increase even if the building is falling down, and they can jack the rent up to whatever level they like just by evicting the tenants or harassing them out.

If the government was really concerned about maintenance, your first question should be, what have landlords done with their rental income and their vast profits — in particular, I'm talking about the big landlords — over the past decades? Have they done the repairs and maintenance that they have received automatic annual rent increases to do? Big landlords are just crying foul and trying to fool the public into believing that this government-sanctioned robbery is needed and will even benefit tenants. I submit to you that you should not be even contemplating these changes until you've required every big landlord to fully open all of their books over the last 25 years to you and the general public and account for every penny of where their huge profits have gone to. Let's see what kinds of maintenance they've done.

Landlords say they can't survive with rents at the current level, but that's hogwash. Rents are at an adequate level as they are, and in many cases are already very high. Landlords already get a good deal. I know. Landlords get a guaranteed annual income increase when most of us are getting income cuts — I have an income cut in my job. We can apply to pass on our capital costs to tenants and then still claim the expenses on our taxes. We have no requirement to demonstrate that we're fulfilling our obligation to do repairs. Overall, landlords get about a 10% annual profit return on our investment. Many get more. Personally, it's enabled me to have and keep my home, which I could never have done otherwise.

I want to talk for a bit, though, about the quality of life in our communities, because I think that's really the bigger question here. I'm a landlord, but my life and who I am is an awful lot bigger than that. I live, I work, I shop, I play, I laugh and I cry in a society and in a community with all kinds of people. But already I see huge effects from the recession that we've been in for several years, which is being exacerbated by the Harris cuts that are happening, increased homelessness, poverty on the streets, increased desperation.

Let's look at the overall effect that this legislation is going to have on our communities that we all have to live in over the next few years.

Landlords still aren't going to build any new rental housing — maybe in the high luxury end where there are already plenty of units, and even then it would probably still be more profitable for them to build condominiums than rental housing, just because of the high cost to build.

Therefore, vacancy rates will still remain extremely low. Rents could easily skyrocket, especially in decently maintained units, because landlords can put the rent through the roof whenever a tenant leaves.

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There's going to be lots of incentive for landlords to get tenants out and very little incentive to work things out in this new mediation program that you refer to. Landlords will more than ever be rewarded to push eviction to the fullest extent of the law and harass tenants into leaving. But don't worry, landlords won't be scared off by harassment fines, because tenants won't complain. Complaints rarely get to court and landlords can recoup the cost of any fine anyway by just raising the rent.

Many landlords still won't do repairs, and they'll have even less incentive to do it now because they know their tenants will have nowhere to go if they try to move, and because they can still get rent increases even if the apartment is a total dive.

There's mounting desperation among people today as this recession continues. There are fewer and fewer decent jobs, less job security, drastic cuts to community services, less protection from discrimination and unfair practices, soaring poverty, no way out for a lot of people. When you have this kind of situation and when you're also creating a situation where tenants are going to be more and more at risk in the places they live — they'll be at risk of losing their homes, they won't be able to get repairs done, rents will be higher and higher, taking more and more of their income — think about what is going to happen to our communities then. Our communities will deteriorate, slums will arise and get worse, violence and crime will increase. It all sounds pretty dire, but I think that's the reality we're facing.

I can't guarantee that I'll always be a landlord or even a homeowner. I might one day be a tenant again. I might have a child who might one day be a tenant, or another family member or a friend who may be a tenant. I want them, and me if need be, to have security as a tenant and not be forced to live in a hellhole, paying an outrageous amount of my income for rent and living in fear of the landlord who constantly harasses.

I challenge you to get your heads out of the silver-lined clouds where big business interests are destroying our world and get your ears to the ground. Listen to what ordinary people have to say about what is happening in real life, because in the end we'll all pay the costs of this desperation and decay in our communities because of shortsighted, greedy mistakes of today. That's not the kind of world that I want to live in.

Mr Bruce Smith (Middlesex): Thank you very much for your presentation. You certainly touched on a number of issues that are contained in the position paper. I think it's very important that you're experiencing success as a landlord yourself, and you should be congratulated for that.

Mr Marchese raised this yesterday, Mr Kennedy, and I think as well Councillor Gardner, with respect to your comments on the 10% return on investment with apartments. I think that's an important statistic to know of, but it's also important to realize that that return is an average over a 10-year period. So certainly during that period of

time we've seen a return of perhaps as high as 30%, and in latter years perhaps a more punitive return, as low as 0% in some areas.

During your presentation you made some reference to the fact that you're satisfied with the system the way it is currently. In your opinion, how would you go about addressing the low vacancy rate that currently exists in this community and what measures would you anticipate pursuing in an effort to negate the impacts this has had in the city of Toronto?

Ms Katryan: I think we should go back to building co-op and non-profit housing as one important source of rental housing. I don't think you can expect or even imagine that private developers and landlords who want a profit from their investment are going to be building housing that ordinary people can afford it; it just doesn't work. I want that housing to be in the hands of the community, not in the hands of some rich landlord who is gouging rents from people who can't pay.

Mr Sergio: I have enjoyed your presentation very much. You have given a good, balanced presentation with good knowledge on both sides, as a landlord and as a tenant.

We have had presenters here; we had developers here yesterday, major ones. Even some of the big developers have said that the legislation in its present form did not get those developers, himself included, to build affordable rental units. You're quite right: Developers are not building today because people can't afford it.

We have had the Ontario Home Builders' Association representative this morning, Mr Campbell, saying that if rent control is lifted, if the GST is lifted, if property taxes are removed, they may consider starting building. What else would we have to do, in your opinion as somebody who is in the field out there? What else do we have to give as a government to those developers to come out and build affordable housing?

Ms Katryan: That's what worries me. What else are we going to have to give? Are we going to have to give and give and then still not see anything? It's easy for them to talk about how, "If you remove rent controls, yes, we'll build all this housing," but I want to see the plans, I want to see the finances and, most of all, I want to see what the rents are going to be. Are people going to be able to afford it — ordinary, average people? I'm not talking about people with high incomes, because they have lots of options. I'm talking about people who live in our communities, ordinary people. Are they going to afford it?

Mr Marchese: Thank you, Ms Katryan, for your presentation. As a landlord, you have more credibility than some others advocating on behalf of a system that protects tenants, so it's very helpful to hear you speaking in the way that you have.

It's interesting, because I've heard a figure of \$1.7 billion being collected under our present system that should be used for capital expenditures. I'd like to validate that figure at some point, but if that is the figure, isn't it being spent for capital repairs? That is the same question you asked. They need to be asking those very questions themselves, but they're not. They simply take the \$10-billion figure that some proponent has said is

needed for the next 10 years for repairs and say, "Oh, my God, what are we going to do?" If people were spending the money they're getting for capital repairs now, we'd probably be in good shape.

I wanted to thank you for your comment about being a landlord and supporting quality of life, where the purpose isn't just to get as much as you can out of a tenant, but rather to get a fair return, and worried about what happens in your community. I wish all landlords had the same vision of communities and life as you do. Thank you for your presentation.

The Chair: Thank you, Ms Katryan. We appreciate your presence here today and your involvement in the process. Have a nice day.

1420

ANDREX HOLDINGS

The Chair: Our next presenter is Sandy Smallwood, the owner of Andrex Holdings. Good afternoon, sir.

Mr Sandy Smallwood: I'm a small landlord and I'm from Ottawa. It was almost 20 years ago that I appeared before another government committee. That committee's mandate was to look at alternatives to the Ontario rent control act. My brief contains about 10 pages of research, primarily on the effects of rent controls elsewhere. I specifically looked at the cities of London, Stockholm and New York. Using their experience, I made some predictions on what would be the likely outcome of controls here.

The evidence that rent controls have done more harm than good elsewhere was overwhelming. To quote Assar Lindbeck, professor of economics in Stockholm, a socialist and author of *The Political Economy of the New Left*, "In many cases, rent control appears to be the most efficient technique presently known to destroy a city — except for bombing." Now, almost 20 years later, with my predictions proven correct, I suspect that no matter how obvious the adverse effects of continuing rent controls, the government of the day made the decision it did for reasons political, not based on good economic or social policy.

This government now has the opportunity to take steps that will eventually lead to a housing economy that works better for both tenants and landlords. It has been proven over and over that rent controls are not part of that future. In 1949, Frank H. Knight of the Chicago School of Economics wrote in the *American Economic Review* of December of that year, "If educated people can't or won't see that fixing a price below the market level inevitably creates a shortage...it is hard to believe in the usefulness of telling them anything whatever in this field of discourse."

Part of the reason for this shortage is the increase in consumption of space that occurs. In my brief I refer to statistics which show that over the years tenants have dramatically increased their consumption of space. This, coupled with little or no new construction, leads to a shortage for those who need it most. Attempts to mitigate the problems caused by this legislation have led to an ever-increasing number of amendments which have restricted not only the rights of landlords but those of tenants as well.

In my mind, one of the worst side effects of all of this intervention has been that it encourages an adversarial relationship. These draft proposals continue in that spirit. Even the title, the Tenant Protection Act, reinforces the idea that landlords are out to get tenants. There are some bad landlords, just as there are some bad tenants, but many landlords are like me: a small businessman who wants to run a reputable business with happy customers. Yes, I do care about the community. Once again, I fear that political expediency will win out, and instead of removing controls and dealing with affordability as the separate issue it is, we will see half-hearted tinkering that will lead to more of the same.

It is with this in mind that I suggest the following: With regard to building improvements, it is essential that you allow for a complete pass-through of any code-required capital cost work; an example is the fire retrofit legislation. Rents should be allowed to be increased to fully cover the cost of borrowing the funds required for the length of time required to amortize the improvement. This is what the banks require to lend the funds to do this work.

The new legislation should allow landlords and tenants to negotiate freely increased rents to cover improvements desired by the tenant. Currently, even if a tenant wants an improvement and is prepared to pay the increased cost of it, a landlord cannot legally agree.

Finally, allow vacant units to rise to a market rent and remain uncontrolled. This would eventually provide a way out of what was a very predictable disastrous situation that we are in today.

I'll give you some examples of what has happened to properties we've had and been involved with in Ottawa over the years.

A 1,200-square-foot apartment: The tenant earns in excess of \$150,000 per year, is chauffeur-driven to work every day and pays just over \$600 a month in rent.

A couple that rent three apartments: One apartment is basically used for storage or as a guest suite when they have a visitor, and they feel that with the low rents they're paying it still represents a great deal.

A 1,300-square-foot apartment where the legal rent is under \$200 a month: In the same building, apartments less than half that size have legal rents that run from \$400 to \$800 per month.

The argument, therefore, that to allow vacant units to rise to market would create a distorted situation or cause confusion among renters is without validity, since that situation already exists thanks to rent controls. If anything, allowing rents to rise to a market level would, over time, bring some semblance of reality back to the housing market.

Finally, evidence in our buildings indicates that tenants with the highest incomes — those with stable employment and who don't have to move to seek new jobs — tend to have the lowest-cost-per-square-foot apartments. Conversely, those who tend to be more transient occupy smaller, comparatively more expensive apartments, and it is generally these people who can least afford it. One reason for this is obvious: Stable tenants have the ability to lock in when they get a good deal and the transients aren't so fortunate.

I'd be happy to answer any questions.

Mr Curling: Thank you for your presentation. A couple of things I would take issue with you on here, and maybe you could explain to me a bit more. Quickly, one of them is Frank Knight, Chicago School of Economics, who had said in 1949 that "educated people can't or won't see that fixing a price below the market level inevitably creates a shortage." The line itself sounds all right, but are you familiar with the fact that there are maximum legal rents that can be charged for apartments here now and yet landlords now rent those below those legal maximum rents?

Mr Smallwood: Yes.

Mr Curling: That theory that he had in 1949 got stuck there, because those dynamics have changed now. The fact is that there are prices that are available that are higher, but the people themselves don't have that disposable income, can't afford that rent. Is it because of rent control?

Mr Smallwood: With due respect, I would disagree with you. The reason why tenants won't move into a more expensive apartment is that if they're already in, as I specifically say, a 1,200-square-foot apartment for \$400 a month, they're not going to move, even if they're not happy with the apartment they're in. There are two markets that exist out there. What has happened specifically because of rent controls is that we have a distorted market.

We have a group of apartments that may have been more recently built. People have mentioned that there were no rent controls on new buildings. The problem is that the mobility of the tenant has now diminished because anybody who's in a cheap apartment isn't going to move out into one of the new ones. So you have a new series of buildings where the rents are not being paid for by the tenants because they're already in apartments where they're getting a substantially better deal, so there's no incentive to move up.

Mr Curling: I would continue that line of debate with you, but I need another one to be on the table. You said, "It is essential that you allow for a complete pass-through of any code-required capital cost work." Let me just put a scenario here: There's a roof to be put on a building and it costs \$20,000 maybe, \$100,000 maybe, and it's amortized, say, five years to pay off. After that is paid off, would the landlord reduce the rent after they've passed through that cost and the roof is still there? Would they reduce that rent?

Mr Smallwood: What I suggested in my thing was the length of time required to amortize the improvement. What I'm referring to is not five years; I'm not talking about the length of time to amortize the funds. If you decide to get five years, I'm not suggesting you should be able to raise your rents to cover a five-year loan; I'm saying the length of time to amortize the improvement. To use your example of a roof, the length of time to amortize that improvement would be at least 20 years; a roof is not going to be replaced in five years.

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Mr Curling: In the guideline for a rent increase that has been given out, say, 2.8%, part of that component of increase is the building cost, the maintenance cost, that is involved in that increase of that rent. Would you say, then, that they should take that off?

Mr Smallwood: I guess we're looking at redrawing all of the rules, and I think that's what we should look at. We should look at redrawing the rules so that capital costs in their entirety can be passed through. Yes, if all capital costs can be passed through in their entirety, then I would say you would relook at the amount that's currently in the rents for that.

Mr Curling: So this emotional game of rent control has been political football then.

The Chair: Mr Marchese. Mr Curling took just a few seconds of your time.

Mr Marchese: I'm happy to hear that you're as interested as the previous speaker was about the effects of any legislation on communities, as opposed to how they might affect your own holdings. That's good to know.

There's an interesting fact that we got from Mr Lampert, who wrote this report for the government, that says about 70% of all tenants will move within five years, which means the majority will be moving. Some may stay where they are, for whatever reason are paying very low rents, and I appreciate that will happen. But the majority will move and the majority will likely be hit with an increase when they move out.

The question for you is, is what you are getting now not sufficient? Do you think landlords should be getting more, for some reason? Is that the point? We've been hearing from many that what they're paying now is very high. You're saying that may be, but decontrols are important to you, and I'm just trying to understand why. Are people paying too much? You're not getting enough? You want the freedom to be able to raise them more? What happens in this kind of dynamic, if you could explain to us?

Mr Smallwood: I wish I had more than a three and a half seconds or whatever I have to reply. There are so many issues you are raising. First of all, when you say 20% of the tenants are going to move, you can't say therefore in five years 100% will have moved, because what happens is —

Mr Marchese: The statistic is 70%.

Mr Smallwood: — some of the tenants will move over and over and some won't move.

Secondly, many of the tenants who move are in those apartments whose rents are already below the legal maximum. In other words, there will not be any increase in the apartment they're leaving, or if they move into one where the rent is already below the legal maximum, there will be no increase in rent for them there either. The only people who will be affected are those who move from apartments where the rent is substantially below the current market level but it's at its maximum legal level.

What I think has to happen, and I mention it here specifically, is — I have a one-and-a-half-bedroom apartment. The legal rent on it is \$800 a month. I've got an apartment across the hall that's twice that size and the legal rent is \$400 a month. The tenants don't understand it. They think they're getting ripped off by the landlord. I don't understand it. What I want to see happen is we start to get to some sort of rational, business-like setting so that the rules start making sense, the rents start making sense, and the tenants' own apartments too.

What has to happen is somehow you have to allow things to get to a normal market situation. That's what we live in. Everything else is a normal market situation, and we have this really warped, distorted thing that's bizarre.

Mr Marchese: So the point you're making is this: Decontrol, and the market somehow will settle itself, and there may or may not be victims in that decontrolling. Is that fair?

Mr Smallwood: There's no question in my mind that there will be some rents that increase when the tenants voluntarily leave. There is not going to be a situation where all of a sudden tenants are going to face — because what has been proposed is that sitting tenants not face any increases; only if they vacate their units. What I hope that will lead to is eventually a market where people pay a market rent for their apartment, not a distorted rent.

Mr Wayne Wettlaufer (Kitchener): Mr Smallwood, thank you for appearing today. You stated something in your presentation that has come out loud and clear but I think nobody has had the courage to say it, and that is that we have an adversarial relationship in the tenant-landlord relationship in the province today.

Part of this is undoubtedly caused by increased government intervention over the years; part of it is undoubtedly caused by bad landlords and bad tenants; and part of it is undoubtedly caused by the fact that landlords haven't communicated to tenants the increased costs that they have faced over the last 10 years in terms of taxes and in terms of utility costs etc.

In view of this, do you think, as a small landlord, that if landlords communicated their cost increases to the tenants, the tenants would be more accepting of rent increases?

Mr Smallwood: No. I think what has happened now is that we live in an environment where everybody immediately looks to what the legislation says. The tenants will look to the legislation and they'll say, "What does it say there?" I would hope that we could sit down with the tenants and say, "There is a common goal."

I think most landlords do want to run a good, clean business and I think there is a common goal there, but I think the legislative environment now prevents that kind of dialogue from occurring because everybody is going back to their strengths and saying, "Here's what it says I have to do and here's what it says you have to do." The battle lines get set and drawn.

Mr Wettlaufer: As a small landlord, you undoubtedly heard about this Russell report that everybody quoted yesterday. When I say "everybody," I mean that the tenants' organizations quoted yesterday. This was based on a sampling of 24 units in the province of Ontario. The Russell report talks about a 10% average return over the last 10 years. I see, using his own figure too, that in 1991 there was a minus 10% return on equity, 1992 about a minus 3%, about a minus 5% in 1993. In fact, the last year that there was any return on equity was 1989 and that was largely due to a dramatic increase in the cost of land, which most small landlords don't realize because they haven't sold their properties. Correct?

Mr Smallwood: Yes.

Mr Maves: There are a lot of folks who have come before us, and we heard it from the previous witness, with bad landlords who apply for and get increases but then don't do the repairs that they were supposed to have done with these increases. How often does this occur in your eye? How many landlords do you know that run this scam?

Mr Smallwood: I know that there are some. I know of them, and they are not good people, they're not good landlords. I would say they're in the minority. I would say they make good headlines when they're found. I think they make great political fodder, but I would say the majority of people do this seriously.

I was in my teens when I first got involved in this business. I want to do this forever. My phone number is listed in the phone book, people don't have a problem calling me at home, and a lot of the landlords I know are the same way. They want to run a good business. It's their asset. The best thing I can have is a good customer who's taking care of my asset for me, and an adversarial relationship doesn't lead to that.

The Chair: Thank you, Mr Smallwood. We appreciate your coming here and being part of our process today.

FAIR RENTAL POLICY ORGANIZATION OF ONTARIO

The Chair: The next presenter is Philip Dewan, president and CEO of the Fair Rental Policy Organization of Ontario. Good afternoon, sir.

Mr Philip Dewan: Our presentation this morning will actually be made by Alan Greenberg, who's the chair of Fair Rental.

Mr Alan Greenberg: Hello. My name is Alan Greenberg and I'm chair of the Fair Rental Policy Organization. Beside me is Philip Dewan, the president of Fair Rental. On behalf of our organization, we'd like to thank you for the opportunity to address this committee.

Fair Rental is the largest residential landlord organization in Ontario. We represent close to 1,000 landlords owning and/or managing almost 200,000 units. Although some of our members own or manage thousands of suites, the majority of our members are owners of small properties, such as duplexes, triplexes and 10-plexes.

In that sense, we are representative of the landlord community as a whole. Less than 25% of all units in the province are in high-rise buildings with 100 units or more. Fully 55% of tenants live in buildings with 10 or fewer units. Public policy must deal fairly with this diverse range.

We are tabling today a detailed submission which responds to each of the issues raised in the government's consultation paper, as well as a few which were not but should have been. We would welcome the opportunity to explore it at length with any member of the Legislature.

This afternoon I will focus my comments on a few points dealing with the issue of greatest concern to Fair Rental: rent controls. By this, I do not mean to suggest that changes to the landlord and tenant legislation, the Rental Housing Protection Act and other issues are inconsequential. Changes in all of these areas are essential. It is just that in 10 minutes we cannot begin to do them justice.

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Let me start by asking, why are we debating yet another variation on the rent regulation game, the third rent control scheme in a decade, the fifth in 20 years since controls were introduced in Ontario? Why, after attempts by all three parties, has no one been able to get it right? The answer is simple. It is that rent controls will never be the right solution to housing problems. Two wrongs cannot make a right and rent controls are wrong in principle and wrong in terms of their economic benefits.

They are wrong in principle because they are discriminatory. Rather than using our progressive income tax system, they are an attempt by the state to foist the costs of a major social policy on to one single element in society: those in the business of providing rental accommodation. Rent controls largely exist because of the need to do something to address the affordability problems faced by low-income tenants. It has been far too easy for politicians of all stripes to say, "Many tenants cannot afford their rent; therefore, we must control rents to keep housing affordable."

But the affordability problems of these tenants are not caused by rents which are too high. They are the result of incomes which are too low. Tenants who are involuntarily spending more than one third of their earnings on rent have an average income of less than \$12,000. Their needs will never be met by rent controls when all that they can afford to pay is \$300 per month or less. No one, including the government, can supply housing at this level. By regulating the whole rental market in a vain attempt to assist those with affordability needs, all that is accomplished is to pile distortion on distortion.

It is now 21 years since Bill Davis, under pressure from the NDP, interfered in the mechanics of the marketplace. By capping rent increases, the Davis government introduced a form of subsidy from one group of citizens to another. This subsidy is not targeted to needy tenants, but applies equally to all. It is a government social policy being paid for by one component of the tax base, the private rental industry, and we're the only industry in our economy which faces this burden and restriction. This is wrong. As a society, we have a progressive tax system that is supposed to redistribute wealth. It is the government's role to help those who need help, with the cost borne fairly by all taxpayers.

That means an effective, targeted shelter allowance program of the type long advocated by Fair Rental and promised by the PC Party in opposition. It means a smaller scale, non-profit program directed at special-needs groups not well served by the private market, and it means consumer protection for tenants, not price controls.

It also means fair property tax treatment for tenants. Those municipal and provincial politicians who easily decry the plight of tenants and call for tighter and tighter rent controls should skip the hypocritical rhetoric and do something real about affordability by taxing tenants the same as homeowners. That alone would do more to address affordability needs than all the regulation in the world.

As an issue of principle then, rent controls fail a very basic test. They force a minority group in society to pay an undue price to appease a larger political audience. Unfortunately, the facts don't matter; it's all about politics.

The second reason that rent controls are wrong is that while they do not achieve their alleged goals — one third of tenants were paying more than 30% of their income on rent before controls were introduced and one third are paying more than that today — they produce quite predictable and devastating consequences for rental housing.

Economists, as well as the people just before me, have agreed for years that rent controls inevitably lead to a decline in the quality and quantity of rental housing. We have seen this come to pass in Ontario. The inability to finance needed capital expenditures, particularly in the past five years under NDP legislation, has meant the quality of the existing stock has suffered. Independent studies have confirmed that there is simply no way under the current rules that aging apartment buildings can be adequately preserved. There's an accumulated backlog of work estimated at \$10 billion, far too little of which will be possible without significant legislative change.

As for new supply, the numbers speak for themselves. Prior to rent controls, approximately 27,000 rental units per year were built in Ontario. Last year, there were barely 500. In the greater Toronto area, where the demand is concentrated, there were only 20 units built, despite a vacancy rate of under 1%. Compare this to jurisdictions like Halifax or Houston, Calgary or south Florida, where buildings have gone up in large numbers despite vacancy rates of 5% and higher.

Rent controls were by no means the sole cause of this decline, but they were a major factor. In order to attract investment in new rental housing, the Rent Control Act must be repealed. At the same time, the property tax differential, development charges, the unfair application of GST to apartments and the other impediments addressed in the recent Lampert report must be addressed. The Rental Housing Supply Alliance, of which Fair Rental is a member, will speak to these supply issues in more detail later this week.

Though rent controls are not the only problem, resolution of the dilemma is a prerequisite for everything else which must happen. We thought this government understood the problem and was going to address it. On many occasions the Conservatives have stated that the present system is broken and that the best protection for tenants is a functioning marketplace. To quote the Premier, "Marketplace rent control is the best rent control mechanism there is."

We are convinced that a system that permits competition and encourages investment in service and technology as well as bricks and sticks will create a more dynamic and healthier rental industry. In turn, tenants will have better service and better value as well as more choice of where to live and what quality of housing to live in.

The industry recognizes that moving from 20 years of regulation to a free market system in one step is not responsible. That is why last winter we proposed a transitional system which we believed was fair to tenants

and fair to landlords. Our proposal included vacancy decontrol with a complaint-based arbitration system for sitting tenants. It would encourage dialogue between landlords and tenants to individually agree on the quality and the cost of services to be provided.

Where they could not come to an agreement, a government mediator would attempt to help out. Sometimes all it takes is someone to explain to the landlord that the tenant wants a new fridge and their suite painted, and that same person may have to explain to the tenant that a \$15 per month increase to cover those costs is not unreasonable. If mediation fails, then a professional arbitrator would be appointed to quickly conduct a hearing and make a determination. Any increases would be based on a CPI-based formula with caps to ensure no unduly large increases.

However, the government chose to go down a different path, which brings me to their regulatory proposals included in the consultation paper. I'll comment briefly on four specific aspects of the paper.

The first issue is one of principle, the idea that the government should not be involved in setting rents unless there is a breakdown between the parties. That means a complaint-based approach, not a universal system like the paper proposes where all increases above guideline must go into the system. If a tenant and a landlord can come to an agreement for a rent increase, why are taxpayers bearing a cost to review this agreement?

The second issue flows from the first: If there is an agreement between the parties, why should this be capped at 4% above the guideline? Whose interests are being protected if tenants want certain services or amenities for which they are prepared to pay a higher price? Tenant associations, who long for a compulsory union model where every tenant must do as they dictate, say tenants will be coerced into agreements. Individual tenants know they are more than capable of deciding for themselves what is in their own best interests.

A few days ago at a landlord-tenant forum in Oshawa, one of the tenants asked about something which had been perplexing him. For several years the tenants in the building had been seeking to have a recreational complex added to their building. They were willing to pay a higher rent for the service but the RCA rules prevented the landlord from collecting the amount needed. "Under the new proposals," he asked, "will we be able to get a larger increase to let us have our rec centre?" When a senior ministry official explained that, no, there would still be a cap on the amount of increase tenants could freely agree to, both the tenants and the landlords in the audience were flabbergasted. "Why?" they asked. It's a question this committee should address.

The third issue I want to touch on is maintenance. The paper proposes a number of significant changes which are directed, we are told, at ensuring the ability to go after landlords who do not maintain their properties. Fair Rental has encouraged the government to crack down on the few bad apples who cause so many problems for the rest of the landlord community. However, some of the measures have not been carefully thought out, nor do the professionals charged with responsibility in these areas appear to have been fully consulted. It is our understand-

ing that both the Ontario building officials and the property standards officers associations are opposed to some of the changes being proposed.

The most significant concern is the proposal to make the violation of a property standard an offence rather than a violation of a work order. It is important to understand what is being suggested: that as soon as an elevator breaks down or a vandal kicks a hole in the wall or a light burns out in the stairwell, the landlord has committed an offence for which he can be ticketed, even before he has had a chance to correct the problem. Moreover, there is no distinction made between common areas and in-suite concerns. He is liable for any defect in an apartment, from peeling paint to a major structural fault, even if the tenant has never notified the landlord that a problem exists.

It is more than illogical; it's simply unjust. It is also impractical. We understand that the Ontario Association of Property Standards Officers is opposed to a ticketing policy because the inspectors would spend their lives trying to figure out how to serve notices on corporations and sitting through court appeals rather than making sure buildings are safe.

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The last concern I want to mention is the loss of legal maximum rents on turnover. In its justifiable desire to reduce administration costs by eliminating the rent registry, the government appears to have made an erroneous assumption that this means legal maximum rents must be disposed of, without recognizing the consequences for tenants as well as landlords. Let's go back to first principles.

The reason the idea of maximum rent was introduced by the Liberals and maintained by the NDP was that it recognized the desirability of allowing landlords the flexibility to move rents down when demand fluctuated, something they would be willing to do only if rents could rise up again as markets recovered. The current proposal will allow the rent to rise back to the market level only on vacancy, meaning there would be a real loss in income for as long as the tenant remained in place. The result would be that landlords would stop discounting rents in soft markets, such as prevail in most of Ontario today. A landlord who is now not taking the guideline rent increase because of the market conditions would be forced to adopt a "use it or lose it" strategy under these proposed rules, charging the guideline increase so as not to lose it for the future, even if this meant increased vacancies. The result would be higher average rent for tenants, something I'm sure was not the intention of the government. Maintaining the existing rules of legal maximum rents which have been supported in the past by all three parties avoids creating this dilemma.

I want to conclude by saying that while Fair Rental does not agree with all the proposals in the government's paper, there are many aspects which we do support. The capital expenditure rules mark a big improvement from the status quo. The LTA proposals are balanced, though more can be done in this area. The repeal of the RHPA, accompanied by responsible tenure protection, will help foster intensification and new development.

We commend the minister for taking the initiative to launch a much-needed reform effort. As it presently stands, the government package does not go far enough to correct the problems. However, if a few modifications are made — and the critical word is "if" — the proposals have the potential to encourage investment that will help preserve our existing housing stock and attract new investors willing to build rental units. These are the keys to providing tenants with real protection through choice and competition in the market. I hope the committee will not lose sight of these goals.

Thank you. Phil and I would be pleased to answer your questions.

Mr Marchese: I understand that your idea is that decontrol is the way to go because that's the way markets should work and it will all even out in the end and everybody will be treated equally or fairly and everybody will at both ends be relatively happy. That's one of the points you make.

Mr Greenberg: What we're saying is that the private market should be allowed to work and that we have an affordability problem. We should be dealing with the affordability problem through the tax system.

Mr Marchese: In some jurisdictions there are no development charges, and some of the buildings are listed as condominiums, which reduces their tax, but that in itself obviously is not encouraging some people to build. What more does it take?

Mr Greenberg: I think the Lampert report is quite clear on that. We are taking off the industry hat and putting on our personal hat. We also build in Florida. There are no rent controls in Florida. That's one of the reasons we're there. Number two, there's an adequate supply of low-cost land. Number three, realty taxes are about 10% of revenue, not 25% and 40%. When you start going through all the various taxes that have been thrown on over the last 10 years in this industry, it's easy to understand, combined with an environment which doesn't allow the investor to make a proper return —

Mr Marchese: So it's going to take a lot. Clearly everybody understands rent control is not enough.

Mr Greenberg: The first step is rent control.

Mr Marchese: It's the first step. So people will feel good about the fact that they can charge whatever the fair market will allow. But you're giving a long list of things you will need basically from governments to be able to help you build. Is that not the case?

Mr Greenberg: Every step is a move in the right direction.

Mrs Lillian Ross (Hamilton West): Thank you very much. That was an excellent presentation, very well thought out.

You mentioned that you had done some research and looked at what had happened in New York and in other jurisdictions. I have also done a little reading. What I've read is that, first of all, in Toronto, since rent control was introduced — let me just read this — 23% of all rental units were withdrawn from the market within three years, and that introduced a 12% reduction in rental housing stock. In New York City, from 1975 to 1985, landlords walked away from 300,000 apartment units — enough to

house the whole city of Buffalo — because of rent controls.

Even here in Ontario with rent controls, previous landlords have said to us that they got rent increases anyway even under rent control. Would you agree that in Ontario that's the case with rent control, that landlords still get increases?

Mr Greenberg: Some landlords are still getting increases today.

Mrs Ross: Would you agree that some of those rent increases have in fact been quite high?

Mr Greenberg: In the last few years, no.

Mrs Ross: In the late 1980s, I believe, we had some statistics that proved that some of the rents increased by as much as 100%. But wouldn't you say that when you look at the experience of New York City, that's a very telling tale? Wouldn't you think that would be the wrong way for Ontario to go?

Mr Greenberg: It was said 20 years ago, it was said 10 years ago, it was said last year and we'll say it again today: That is the wrong way.

Mrs Ross: It's quite frightening, isn't it?

Mr Curling: I think it's an excellent presentation and I have great respect for Phil Dewan and Fair Rental Policy. They've come a far way in organizing and making — I say they're coming a far away again being that, as you said, tenants were quite organized in presenting their case, and here you are presenting your case too. But you made some very important points here that time would not allow us again to go into.

In one part you said, "They are the result of incomes which are too low. Tenants who are involuntarily spending more than one third of their earnings on rent have an average income of less than \$12,000." As you were saying, there are some people who are paying too high a portion of their income into rent. But the fact is, sometimes you go back to feel that it's rent control that is causing all of this problem, but as I read on, you said far more other issues have caused the problem which we have today.

In addressing this issue, and all these things are addressed, when would your group be ready to build for the low end of the market, for those who are having the difficulty, who are paying more than 30% and 50% and 60% of their income in rent? What time would you say — you see, they are stepping in the right direction. How long a step would it take before you start building at the low end of the market?

Mr Greenberg: I think we've addressed it in our paper quite clearly when we said that at \$300, not even the government can afford to build without subsidies.

Mr Curling: Let me say this then: In the cancellation of the non-profit housing that the government had done, doesn't that make it more difficult for you? You say the trickle-down voodoo economics that is coming down. Wouldn't that take a much longer time if they were providing supplies at the bottom end for those which are needed, which you wouldn't build for really because you're not making any money off that?

Mr Dewan: There's a difference between building at the bottom end and what the government has been doing over recent years, which is building apartments that cost

\$1,800 for the province to carry and subsidizing them down to the \$300 or \$400 which the tenant can afford.

Mr Curling: You ask for the shelter allowance here too, which is the same thing.

Mr Dewan: Sure. We've simply said a shelter allowance can address the needs of those tenants more cheaply. It's a matter of which is the most effective means of getting assistance to the largest number of needy tenants in the province, and the numbers show that shelter allowances are a much more cost-effective means of trying to assist them.

Mr Curling: So you're going to build at a high rent and then —

The Chair: Thank you, gentlemen. We appreciate your being here this afternoon.

GALLERY SPECIALTY HARDWARE

The Chair: The next presenter is Philip Turk of Gallery Specialty Hardware Ltd. Good afternoon, sir. Welcome to our committee.

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Mr Philip Turk: Good afternoon. My name is Philip Turk. I am the chief operating officer of Gallery Specialty Hardware. Our firm is an Ontario manufacturer and distributor of fire safety hardware and a member of the Canadian Fire Safety Association. We have joint-ventured with Ontario manufacturer Eveready Exact Closures to manufacture and distribute ULC-approved 20-minute fire door retrofit kits. Our customers use the kits to upgrade older apartment front doors which do not have a 20-minute fire rating label in accordance with the Ontario fire code.

The purpose of my presentation today is to highlight the importance of fire safety and enforcement of the fire code, and to urge you to address fire safety in new tenant protection legislation.

One of the goals of tenant protection legislation, according to the ministry's June 25 tenant protection discussion paper, is to improve safety and proper maintenance in Ontario's rental housing units. I would like to quote from page 3 of the paper itself: "Tenants expect that for their rent they will have well-maintained and safe homes. On balance, most landlords look after their buildings. However, from time to time there are serious health and safety problems that go unremedied."

I absolutely agree with the view that there are serious safety problems. In fact, the problems I am most familiar with are in the area of fire safety. These are problems which I believe can be resolved quickly and cost-effectively through enforcement of the Ontario fire code. The province has a clear opportunity to make a marked improvement in fire safety, because in its current form the existing system fails to provide tenants with the minimum level of fire safety required by the Ontario fire code. Tenant protection must mean fire protection.

We applaud the government's intent. It is clearly in the public interest that there be new tenant protection legislation and a coordinated effort with the Ministry of the Solicitor General and the office of the fire marshal to enhance tenant safety in the area of fire protection and make landlords more accountable for the condition and

maintenance of their buildings. Fire protection is especially critical given Ontario's aging housing stock.

This is the issue. Residential buildings in Ontario fall into two categories: those constructed prior to 1976 and those constructed after 1976. In 1976, the Ontario building code began to require that every apartment unit front door installed in a building be labelled with its fire protection rating. The purpose of this requirement is to provide an accurate measurement of the amount of time the door can withstand exposure to fire. In residential apartment units, all doors installed after 1976 should have a label identifying them as having a 20-minute fire protection rating.

Doors installed in buildings prior to 1976 are not labelled and thus their fire protection is not known. In an effort to provide Ontario tenants living in pre-1976 buildings with minimum building performance requirements essential to life safety, a new section called "Retrofit" was added to the Ontario fire code in 1992. This section requires old doors that do not provide a 20-minute fire protection rating to be either replaced with new labelled doors or retrofitted to meet the 20-minute requirement.

It exempted landlords from removing old doors and replacing them with new doors if the existing doors are 45-millimetre solid-core wood doors. The reason for this exemption is that solid-core wood doors provide a level of fire protection similar to that of a 20-minute fire-rated door. The section states that the chief fire official, which means a municipal fire chief or a member or members of the fire department, has the discretion to approve materials, equipment or systems that will provide protection similar to the protection provided by compliance with the requirement. "Similar to" is an important point which I will return to in a moment.

On February 1 of this year, the office of the fire marshal issued a revised opinion, which differed from its August and November 1995 opinions, on the safety of individual apartment front doors. They advised that a type of door called tubular core is acceptable. Tubular core wood doors have hollow areas and contain sawdust and other materials. Solid-core wood doors are solid; they have no hollow areas. The opinion of the office of the fire marshal is that although they do not meet the 20-minute fire-rating standard, doors of tubular construction provide an acceptable level of protection for openings between suites and a public corridor and thus are capable of achieving the necessary fire performance envisioned by the current fire code requirement. They do not say that they provide a similar level of protection.

This has led to confusion among municipal fire officials across the province. Although it is an opinion and not binding, fire chiefs and inspectors do not know whether to enforce the specific fire code requirements I have described or to follow another new opinion of the Ontario fire marshal, an opinion which, ironically, many fire officials feel threatens tenant safety. These officials have chosen instead to rely on their own knowledge, which tells them that these doors must be either retrofitted or replaced, as is called for in the Ontario fire code.

There is sufficient testing evidence which bears this out. In fact, we have learned that a test conducted as

recently as August 1995 by the Underwriters' Laboratories of Canada for the office of the fire marshal concluded that tubular core wood doors provide only seven minutes of fire protection. According to the test, the door began to separate from the frame at three minutes and by seven minutes the door had failed. They wrote that the test data gathered by the Underwriters' Laboratories of Canada over the years relating to the performance of tubular core type door construction is consistent with the results of this test, where tubular core doors failed the requirements of the standard at three to seven minutes of fire exposure. All of this is consistent with the results of another set of tests which we had done at Underwriters' Laboratories of Canada. I have brought with me today photographs of those results for your examination.

Therefore, despite the fact that tubular core doors provide only seven minutes, rather than the required 20 minutes, of fire protection, the fire marshal's office has deemed them acceptable.

The fire marshal's communiqué has significant ramifications for tenants and landlords. In some municipalities, the fire chiefs and inspectors are enforcing the black-letter requirements of the regulation and are not allowing tubular core wood doors to remain. In other municipalities, both fire chiefs and inspectors are using the February 1 communiqué and including tubular core wood doors as being in compliance with the regulation. Further confusion has arisen in other areas, where fire chiefs and inspectors disagree on the issue, and enforcement becomes a matter of an inspector's own judgement.

As a result of this inconsistency, two things have happened. First, tenants in some municipalities, including the city of Toronto, are receiving the full benefit of the fire code requirements. In those municipalities, the fire chiefs and inspectors are requiring that all tubular core doors be retrofitted or replaced. Second, tenants in other municipalities are receiving an inferior level of fire safety and fire code enforcement since fire chiefs and inspectors are permitting tubular core wood doors to remain. This puts tenants' lives at risk.

In preparing this presentation, we have consulted with several tenants' groups and the office of the fire marshal. We believe the current situation means the following:

The lack of fire-rated doors puts tenants' lives at risk. Allowing tubular core wood doors that provide only a seven-minute fire protection rating to remain in buildings puts tenants at risk. If a fire breaks out in the corridor of their building, a tenant will have only seven minutes before their door fails and fire and smoke enter their unit.

The absence of fire-rated doors increases tenants' risk of injury or death from smoke inhalation. Most fire-related deaths and injuries are smoke-related. When a fire starts in an apartment building, tenants are advised to remain in their units and wait for help if there is fire or smoke in the corridor. Tenants relying on the protection of their tubular core wood front door will have only seven minutes until the door fails. When this happens, the door separates from the frame and smoke enters around the perimeter of the door, leaving the tenant without any protection.

The absence of fire-rated doors discriminates against tenants living in older buildings. It is estimated that 780,000 units, or 60% of Ontario's 1.3 million private rental units, are more than 25 years old. By allowing tubular core doors to remain in those buildings, tenants residing in older units are at a greater risk of injury or death from fire than neighbours living in newer buildings. 1510

The absence of fire-rated doors disadvantages high-rise residents in particular. Residents of high-rise buildings are instructed to remain in their units and wait for instructions before leaving their units. If a fire starts in or spreads to a corridor, tenants cannot safely evacuate and must remain in their units until help arrives. A door with a 20-minute fire protection rating is the only line of defence between tenants and the fire.

The absence of fire-rated doors faces a particular threat to seniors. According to the May-June Ontario Fire Service Messenger, a publication of the office of the fire marshal, statistics indicate that adults over 65 years of age are at the greatest risk of dying in a fire. Since it is difficult for less able-bodied seniors to move quickly, especially in the stressful event of a fire, there is a greater likelihood that they would remain behind their closed front door in the event of a fire instead of trying to run down a corridor into a stairwell where they would be unable to negotiate the stairs.

This situation exposes landlords and perhaps the province to potential liability. Confusion and inconsistent enforcement at the municipal level may expose landlords to significant liability if a fire occurs. If a fire occurs and tenants are injured or die because the tubular core doors of their unit burn down, the landlord may be held liable for failing to comply with the fire code. Since the fire marshal's communiqué is only a statement of an opinion, it is not binding on fire officials. As a result, it is questionable whether landlords can or should rely on it.

We believe that a consistent level of tenant safety and fire protection can easily be achieved throughout Ontario. An overall fire safety and tenant protection policy that includes strict enforcement of the fire code will ensure that tenants across Ontario receive an optimum level of fire protection and eliminate any confusion arising among municipal fire officials and landlords.

We urge the Ministry of Municipal Affairs and Housing to do three things: First, make tenant fire safety a key component of new legislation; second, impose a duty on landlords within the new tenant legislation to meet the requirements of the fire code; third, impose more stringent penalties on fire code violators through new tenant legislation.

New tenant protection legislation must address fire protection. We believe this government has an opportunity to make a break with past governments and seize the opportunity to make older apartment buildings safe for tenants. There is a hierarchy of fire protection devices and equipment. This includes doors, alarms and sprinklers. In an ideal world, all buildings would have all of the necessary equipment. However, at a time when the province is tackling the issue of tenant safety, now is the time to ensure the fire code itself is enforced.

Thank you for the opportunity to present this afternoon. I would be pleased to respond to your questions.

Mr Wettlaufer: Mr Turk, thank you for your presentation. For a number of years I was in the insurance business and I was forced to make inspections of premises. I would try to sell the risk to the insurance company based on recommendations of physical risk. In many cases, I used to have to go to the apartment owners and suggest to them what was an acceptable type of door, for instance, and many other safety features. Could you tell me what one of these doors costs?

Mr Turk: Which type of door are you asking about, sir?

Mr Wettlaufer: A standard, pedestrian retrofit door.

Mr Turk: Retrofit means you can take an existing door and retrofit it to the standard. That would cost a maximum of \$135 installed.

Mr Wettlaufer: If you had a four-unit building, we'd be looking at something in the area of \$500?

Mr Turk: That's correct.

Mr Wettlaufer: One month's rent for one unit.

Mr Turk: That's a one-shot; you never have to do it again.

Mr Maves: A fire is a terrible thing. I was involved in a house fire at my neighbours the other day and it's very scary. How much would it cost to install the Gallery 20-minute fire door retrofit kit?

Mr Turk: The installation alone would be between \$30 and \$50, depending on if it was done by union or non-union —

Mr Maves: The cost of the door and all that stuff.

Mr Turk: The maximum is \$135.

Mr Maves: So you're looking at \$170?

Mr Turk: No, a total of \$135.

Mr Maves: With installation?

Mr Turk: The door cost is \$80, plus installation.

Mr Maves: Okay. So if I had three apartment units at 500 bucks apiece, and there's a 3% increase — that's 15 bucks a unit, 45 bucks a year — it would take me about two and a half years to pay for that, roughly?

Mr Turk: Yes.

Mr Gerard Kennedy (York South): I'm just wondering, why did the fire marshal change the standard? Why did he go from a 20-minute door to one that lasts three to seven minutes?

Mr Turk: We don't know that. That's our concern.

Mr Kennedy: There was no response from the fire marshal's office to your inquiry?

Mr Turk: There was a response, but the response indicated that there was some cost-benefit analysis that they had done and they therefore felt that it provided acceptable, to them, fire protection. However, it does not.

Mr Kennedy: Did I understand your presentation correctly? Is that interpretation in apparent contravention of the Ontario fire code?

Mr Turk: Yes, it is, in my opinion.

Mr Sergio: Mr Turk, thanks for coming down. I'm pleased that you were able to get on the list. Would you recommend perhaps to the government that all new buildings be fitted with the type of doors you're suggesting?

Mr Turk: All buildings that were built after 1976 have rated doors, so it doesn't affect buildings built after 1976. It only affects buildings prior to that point.

Mr Sergio: Every one meets the standards now?

Mr Turk: Most current buildings that are built meet standards, yes.

Mr Sergio: Do you have a figure, let's say, what it would cost to retrofit all the doors prior to that particular date?

Mr Turk: That depends how many doors there are. Our estimate is there are a couple of million doors.

Mr Sergio: A couple of million doors?

Mr Turk: Yes.

Mr Marchese: Mr Turk, you present I think a good argument. The ministry says that this section requires all doors that do not provide a 20-minute fire protection rating to either be replaced with new labelled doors or retrofitted to meet the 20-minute requirement.

Mr Turk: Yes.

Mr Marchese: Then it exempts the landlords from removing all doors and replacing them with new doors if the existing doors are 45 millimetres solid core wood. That seems reasonable —

Mr Turk: That's correct.

Mr Marchese: — because it provides for a similar kind of protection. The new decision made by the fire marshal talks about acceptable level of protection, which I think you argue may be not so acceptable, given the time difference. One is 20 minutes and the other one is seven minutes in terms of its fire durability. That's a problem.

Mr Turk: That's exactly my point.

Mr Marchese: So you've raised this concern and you've talked to the minister or ministry people or political staff. What have they told you?

Mr Turk: No, we haven't done that. We have met with the fire marshal's office and we've met with some tenants' associations. We have spoken to some political advisory staff.

Mr Marchese: What did they say?

Mr Turk: Indications are they think that it's a no-brainer.

Mr Marchese: A no-brainer?

Mr Turk: That one should retrofit, yes.

Mr Marchese: It seems to me that needs to be pursued, because the argument is a good one. What you need is a provincial look at this in terms of getting provincial direction and not allowing for this kind of discretionary opinion to be made where the language is different, from "similar to," "acceptable" and so on, and you have a confusing kind of standard that people are abiding by. It would seem to me that this Conservative government should be listening to your arguments, and hopefully the minister will address that matter.

The Chair: Thank you, Mr Turk. We appreciate your being here this afternoon.

OLDER WOMEN'S NETWORK

The Chair: Our next presenters represent the Older Women's Network, Grace Buller, Helen Riley, Frances Chapkin, Nina Herman and Eleanor Matlin. Good afternoon, ladies. Welcome to our committee.

Ms Frances Chapkin: I'm going to speak first. Thank you for providing us with this opportunity to address you.

Let me start by telling you what the Older Women's Network is and why we are here today.

Ten years ago, a group of women identified the need for older women to empower themselves in order to achieve economic security and social justice in the later stages of life. At that time they advocated to achieve flexible retirement that would terminate mandatory retirement; changes in the spouse's allowance that would include single and divorced women; a more supportive family law legal aid system for women seeking separation and divorce; compensation for primary caregivers; and they even dreamed of building a housing co-op for older women.

In the past few years, because of changes in government policies and proposed legislation, the Older Women's Network has grown in numbers and in determination to advocate on behalf of older women. At all four levels of government in the greater Toronto area we have made presentations regarding the Canada pension plan, old age security, the Beijing platform for action, health issues through Bill 26, such as long-term care, transitional care and hospital restructuring. We spoke against the introduction of drug user fees and the privatization of homes for the aged. We addressed the changes in family law legal aid and in the Advocacy Act, as we are concerned about elder abuse and violence against women, which takes many forms.

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We spoke to support affordable and accessible public transportation. We sought to achieve pay and work equity and we raised our concerns regarding video gambling and the desecration of our environment. Today we are here to address the need for affordable housing.

We are proud that our dream of a co-op for older women is being realized. It is in the downtown area on the Esplanade, and it will be topped in November 1996, 142 units. However we, as stakeholders, are concerned today that if rent controls are removed, too many older women on fixed incomes who are tenants or need to become tenants in the future will be made to suffer.

My name is Frances Chapkin. I am the present chair of the Older Women's Network. With me are Grace Buller and Helen Riley as social issues action committee co-chairs, and Nina Herman, who is one of the original founders of the Older Women's Network. Grace Buller will make the presentation.

Ms Grace Buller: Many of our members are tenants and are therefore concerned that they have access to well-maintained, affordable housing. The present legislation of the Landlord and Tenant Act assures tenants that they are not subject to unfair and unreasonable evictions. The Rent Control Act protects them from larger and more frequent rent increases, and the Rental Housing Protection Act assures the maintenance of rental units and prohibits their conversion to condominiums.

One of the basic human rights in a civilized society is the right to a home. If an elderly person does not feel safe in her ability to maintain that home at a reasonable rent, has constant fear of eviction, is frightened of complaining about poor maintenance of the building, her quality of life is jeopardized.

In Metropolitan Toronto, 52% of the population are tenants and, of those, 50% have incomes of less than \$32,000 a year, while 30% have incomes of less than \$23,000. Severe affordability problems occur among those with incomes under \$23,000, who cannot afford even low, small-unit market rents. Rent control, which is the regulation of market rents, does not even address their problems. Their problems typically require rent subsidies. There are 60% of older single women on guaranteed income supplement, living on less than \$13,000 a year. They're waiting for subsidized apartments and are now paying market-based rents.

From 1981 to 1991, the number of Metro households paying over 50% of their income on rents rose from 49,000 to 62,000. The situation now has worsened with increased unemployment and underemployment at depressed wages. Older women who have not reached retirement and are seeking work have relatively low incomes and cannot afford large rent increases.

The proposed legislation will hold tenants hostage. The onus will be on the tenant, often a frail, elderly person, to bring a disputed matter forward. As well, a fee, which may be prohibitive, is suggested for adjudication of a dispute.

The present legislation requires a landlord to justify a rent increase. De-control of rents on vacant apartments will force many seniors to remain in their current apartment, while at the same time landlords may put pressure on them to move, creating a stressful situation. The point also is that older people and disabled people may need to move because as they get physically frailer, they may require apartments more adaptable to their needs. Also, the result of unregulated rents will force many people to double up. There will be overcrowding, homelessness and the development of slums. In short, Ontario residents will face the misery one finds in many American cities.

With controls lifted for the conversion of rental buildings to condominiums, the supply of rental housing will decrease, forcing rents even higher. One of the objectives of this proposed legislation is to free up developers to build more rental housing. This purpose cannot be fulfilled since renters as a group are usually of modest means and will not be able to afford the increased rents necessary to allow substantially higher profits for developers and landlords.

Our recommendations are that we urge the province of Ontario to:

(1) Abandon its proposal to repeal or amend the Rent Control Act, the Rental Housing Protection Act and the Landlord and Tenant Act.

(2) We request the Minister of Municipal Affairs and Housing ensure that heavy fines be imposed on landlords who are found guilty of failing to meet legal maintenance standards.

(3) We urge the Minister of Municipal Affairs and Housing to consider the establishment of a capital reserve fund as a possible solution to the capital expenditure problem, such a reserve to be funded by the landlords out of the guidelines increase and by other means, and not from any extra charge imposed on tenants.

Ms Nina Herman: Good afternoon and thank you for the opportunity to be heard this afternoon. I'm just going

to add a few remarks to those of the previous speaker and I would like to pose some questions — really it's one basic question — to you, ladies and gentlemen, which I hope you can answer.

The removal of controls on vacant apartments, as the province proposes, will have a particularly devastating impact on older women seeking affordable rental housing. Many low-income older women living alone are already forced to spend a disproportionate share of their income on rent, leaving very little for necessities like a Metro-pass, to say nothing of amenities. There are long waiting lists for subsidized apartments, and the situation is exacerbated by the government's withdrawal from financing social housing which would offer subsidized rents.

Many women may be seeking rental housing for the first time because their long-term marriages have ended in divorce with a mandatory sale of the marital home, and their share of that sale is not adequate to purchase a high-priced condominium. If these women cannot find a rental unit which they can afford, what are they to do? That's a question I'd like an answer to.

In today's society it's no longer feasible for older women to move in with their children. The children, with young families, can barely afford to house themselves, and mothers do not want to move in with their children. The children may live in cities at great distances from their mothers and if they do move in with their children, those overcrowded conditions and the tensions which result can lead to elder abuse.

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Older women cherish their independence. Even when their health may be frail, they're able to remain in their communities if there are community supports — which we hope will improve — providing they can find affordable housing. Are we to give them no choice but to be institutionalized? That's our second question to you.

When a woman is evicted from her rent-controlled apartment, as was the experience of one of our members recently because her landlord said he needed it for his family, which was allowable under the act, where is she to move when landlords will raise rents sky-high on vacant apartments? I ask you that question. We have women who are distraught, who are living in fear of what the government will do with this legislation.

We would appreciate answers to these questions and urge you once again to keep controls on vacant apartments and impose them on new apartments.

The Chair: Thank you, ladies. We've got about three minutes per party for questions.

Ms Buller: Answers.

Mr Kennedy: I'm going to try and give you some of what the government seems to be saying. The minister said yesterday that you should trust this legislation because landlords have the upper hand right now. He actually agreed that landlords have the upper hand and they have no motivation to be concerned for the tenants, but you should see this as a measure to bring more apartments on stream. In other words, the answer to your question comes after whatever shake-out happens when rent controls are lifted. At some point in the future, there will be more apartments.

The minister's recommendation at the end of his presentation yesterday is that even though the landlords are already in charge, we need to go through this for you to have the supply that would put you and the members of the Older Women's Network and other threatened tenants in charge. That was the logic we heard yesterday. I don't know if you want to comment on that.

Ms Helen Riley: Maybe I can comment on that. No, we don't believe there will be an increased supply of rental housing as a result of these proposals. In fact, there will be a decrease and the supply will be more expensive. The idea that tenants can negotiate with landlords what they're going to pay is not exactly an equal power of negotiation. The tenant is in a weak position, particularly if they have an investment in living in a certain place and they don't want to move. We feel these changes would be extremely disadvantageous to tenants in general.

I'd just like to point out too that although we're speaking on behalf of the Older Women's Network and we have these very particular concerns about seniors and women, most people at some point in their lives are tenants and do rent — as students, as young couples and as seniors. When we're talking about the rights of tenants, we're really talking about the majority of the population. I would like you to keep that in mind.

Mr Kennedy: I want to congratulate you for putting this situation in very understandable terms of people who wish to have their independence. Somehow, I think people who are in more secure situations can take for granted that an affordable rental place is the building block for somebody to have, and that's a point you've made very well.

I'm wondering if you can comment on a question that was asked from the other side yesterday, that somehow people who are older have more stable housing and therefore don't need to be worried about the concerns. That was a proposition put forward, that somehow people — seniors, others who are older — are less likely to move, are less likely to have need of the protection from the decontrol standpoint.

Ms Riley: I don't see where that idea comes from. I own my own house now.

Mr Tilson: You made it up. We didn't ask that question.

Mr Kennedy: Check Hansard.

Ms Riley: I'm fortunate in that respect. At some point, I will probably have to move into rental accommodation, when I can no longer afford to or I'm no longer physically able to keep up my own home. Even though I'm not a renter at this point, certainly older people do move from their own homes into rental accommodation, move into, as was mentioned earlier, a more suitable accommodation as they may be more disabled or more frail and need more support.

Mr Marchese: I want to congratulate and thank all of you for the ongoing advocacy work that you do, not just in the field of housing but in a variety of different fields. I've seen some of you in different hearings around different issues. You've raised many concerns, and many have the same anxieties you do. The only ones who don't seem to have that anxiety are the developers, the landlords and the Tories.

There's a connection here. I would urge all of you to keep on watching the television to find out who appears in front of this committee and to hear what they're saying, because when the developers come here they say:

"Governments, those who intervene, have got it all wrong. Rent controls are bad. In fact, it's hurting you, it's hurting Ontario, because we could be building more if we just didn't have them. But we've got to do a little more than just getting rid of rent control. Don't worry, when we decontrol them, somehow the market will take care of itself and all of us in the process."

The Tories argue that government shouldn't interfere with the market, it's too interventionist. On the other hand, the landlords and the developers want the government to interfere for them to build. On the one hand they say, "Don't interfere"; on the other hand these fine Tories say: "We've got to. We've got to get rid of rent controls." They also want us to get rid of something else, so they want the government to get involved. They want the government to eliminate the provincial capital tax. Isn't that interesting? They don't want the government to intervene, but they do want the government to intervene to get rid of the provincial capital tax, reduce the development charges, equalize property tax, streamline regulations and so on. There's a whole list of things they want the government to intervene in on their behalf, because in the end, ultimately, it will be good for us.

Please follow the television network. You need to hear what these fine members on the other side are saying in collusion with the developers and the landlords.

Thank you for your interventions and your advocacy.

Mr Hardeman: Good afternoon, ladies, and thank you for coming in. There are a couple of points in your presentation I just wondered if you could maybe comment on. One relates to what Mr Kennedy spoke to. The statistics are that 20% of the renting population in Ontario move every year and 70% move in a five-year period. Is that number, in your opinion, true for seniors? One of the things that people put forward in that proposition is that people living in rental accommodations tend to rent for one purpose and then, as the family grows, they need a different accommodation, and then, as the family decreases in size, they need a third type of accommodation. Would it not be true that numbers of seniors, when they've found their accommodation for that stage of life, would tend to want to stay in that accommodation and not be considered trapped in that accommodation?

Ms Buller: I think they'd like to stay in that accommodation, but often when they become, as I mentioned, frailer they aren't able to cope with that accommodation. Perhaps their income decreases and they have to move into another apartment. There are many reasons why they would have to move. Although I have no statistics on that — maybe my friends here have — I would say that numbers of seniors do move or are forced to move because of the circumstances of their physical life, and therefore they do move.

Ms Chapkin: We would be very pleased if the government would give us a grant of money to do some research in this area; then we would bring you the numbers you're asking for. We do have case histories of

a woman, for instance, who is on eight medications and is now concerned because of the user fees, that it's going to cut into the amount of money she has to spend on rent.

She presently lives in a two-bedroom apartment, because she lived in that with her husband, who has died, and she sees herself having to move into a one-bedroom because she won't be able to continue to pay the rent in the two-bedroom apartment. However, if the rent in the one-bedroom goes up, it might even go up beyond what she's presently paying in the two-bedroom apartment. We're not into a numbers game; we're concerned about individual cases. These keep on coming forward to us day after day, particularly since our co-op is moving towards completion. We have hundreds of calls from people saying, "I'd like to move into that location."

Mr Hardeman: The other question I'd like a quick comment on was that earlier this afternoon we had a presentation from a delegation that was talking about a housing co-op and its inability to turn it into condominiums, to convert. With the 100% support of the tenants presently in the building, they still could not convert because the city of Toronto would not allow it. How does that relate to the co-op you're building? Would you or would not ever be considering a conversion?

Ms Chapkin: When we've been struggling for 10 years to have the co-op completed, we certainly wouldn't consider it as a condominium, because this is not what the women who originally planned this and worked through it intended. A co-operative is something that means a lot to us. The term itself is endearing to a group like the Older Women's Network.

The Chair: Thank you, ladies, for coming to visit with us this afternoon. We appreciate your involvement in the process.

1540

MUSKOKA LEGAL CLINIC

The Chair: The next group is the Muskoka Legal Clinic, Jo-Anne Boulding representing the clinic. Good afternoon, Ms Boulding. Welcome to our committee.

Ms Jo-Anne Boulding: Good afternoon. My name is Jo-Anne Boulding. I'm a lawyer at the Muskoka Legal Clinic. The clinic is located in the district municipality of Muskoka. We have our main office in the town of Bracebridge and a satellite office in Huntsville. The clinic catchment area covers the entire district. We provide a variety of services, including summary legal advice and representation to tenants. In 1995, 11% of our cases were landlord and tenant matters; as well, 37% of our summary advice intakes were landlord and tenant matters. We've been involved in all aspects of tenant matters from rent control to courts. We appeared at the standing committee and provided written submissions on rent control in 1992.

I've prepared some written submissions on some of the changes suggested in New Directions. To summarize, tenants depend upon the government to protect their rights, and New Directions does not offer this protection. Housing is of paramount importance in people's lives. Housing that is substandard is a serious problem in our community. Unlike large urban centres, hydro and heat costs are rarely included in the rent and are the tenant's

responsibility. Disrepair and poor maintenance can substantially affect these costs; for example, insulation, windows, roofs, hot lines and pumps.

In the Ontario Law Reform Commission's interim report in 1968 the commission took the position that the landlord should provide premises which are fit for human habitation and in a good state of repair and that the landlord should primarily be responsible for keeping them in that condition. The commission also concluded that it was unrealistic to expect municipalities to strictly enforce maintenance standards and that tenants should have the right to take landlords to court for enforcement of these landlord obligations. This need continues today.

The government's discussion paper offers as a solution strengthening the powers of the municipal bylaw enforcement officers. In our community, the bylaw officers generally do not involve themselves in tenant matters. In the six years that the clinic has been operating, we can count on one hand the number of times we have been able to get a bylaw officer to make an inspection, let alone write a report and give a written notice. The most frequent answer provided in one town is that the tenant must go to town council to get an order for the bylaw officer to attend at the property to do the inspection.

While we have been able in one instance to get a report, and in fact have the officer in court to testify, it is not the normal course of events. Even in that case, no order was made against the landlord by the town, even though the property was designated as uninhabitable and the judge permitted the tenant to terminate her lease. The tenants have to depend upon knowledgeable contractors, Ministry of Environment inspectors, health unit and fire department officials to provide the reports to go to court and have the matter adjudicated.

In our community, as with the rest of the province, cutbacks have been made and it is unlikely that any moneys or personnel will be allocated to property inspections.

It's essential that the province keep the minimum provincial property standards. They must be safeguarded for those communities where the existing bylaws do not adequately protect tenants as well as in unorganized territories. There should also be a mandatory requirement that each municipality have and duly enforce a minimum property standard. If the municipality is not diligent in the performance of the property standards bylaw, the tenant should not be the one who suffers. The province should ensure compliance and charge the cost of the enforcement back to the municipality.

Tenants pay to occupy safe, well-maintained premises. Where the landlord is not prepared to make the repairs and maintenance, especially to vital services like heat, septic system or water supply, there must be a mechanism that provides the tenant with the appropriate remedy. Abatements in rent have proven to be an effective means of enforcement of standards.

Strong safeguards must be added to protect tenants who make an application against their landlord due to harassment. As it appears that this government is leaning towards a single delivery system to deal with all tenant related matters, it would be easy to track various types of applications. In order to protect the tenant, no landlord's

eviction application should be dealt with until the tenant's application has been determined.

Rent control: The government's introduction to the Legislature suggested no radical changes to the current system, yet the ability to raise the rent without any control between tenants is a major change to the system and will greatly impact upon tenants' ability to secure safe, affordable housing.

New Directions creates a powerful financial incentive for landlords to evict tenants. The idea that tenants can freely bargain with a landlord over the price of the apartment is as startling as it is alarming. Tenants do not have equal bargaining power with their landlord any more than the rest of us do with our banks, insurance companies or grocery store. Many tenants are poor and elderly and are living on fixed incomes and have limited resources to engage in negotiations with landlords.

Unfortunately, there are landlords who have shown their willingness to harass tenants into vacating the premises through illegal means like cutting off the water or the heat. To be able to raise the rent as much as he or she wishes adds a further incentive to these unscrupulous landlords to harass tenants into leaving their premises. What comfort will an enforcement unit be to the single mother with an infant who has no heat or power? We ask this committee to recommend that the proposal for decontrol of rents of vacant units not be adopted.

Mobile home parks and land-lease communities: In the district of Muskoka, we have a number of mobile home parks. The opening statement in New Directions recognizes mobile home parks' and land-lease communities' uniqueness. The uniqueness lies in the fact that typically, the mobile home or the house in the land-lease community is owned by the tenant. As a result, when these tenants are evicted, they stand to lose more than just their place to live. In a land-lease community, the house is fixed to the land, and the vast majority of mobile homes in this province are truly not mobile. They have been affixed to the land for decades and many have additions that were never meant to be movable.

Residents of mobile home parks and land-lease communities are typically seniors and poor people for whom the mobile home purchase was their only chance for home ownership. Rents are traditionally low, as the only things these tenants are paying for with their rent are hook-up to the sewage, water and electrical utilities, the maintenance of these and common areas, and a fee for the use of the land. This kind of affordable rural housing should be protected and encouraged.

Bill 21, the Land Lease Statute Law Amendment Act, extended the protection of the Residential Housing Protection Act to these communities. It was quite rightly perceived by the Legislature that tenants of mobile home parks and land-lease communities needed extra protection from their landlords' desires to evict them because more is at stake for these tenants. The RHPA protection has meant that landlords could not use conversion as an excuse to get rid of tenants without the municipality's approval. It has also meant that mobile home parks have continued which would otherwise have been closed.

Vacancy decontrol for these tenants would mean they would be even less likely to be able to sell their homes

than they are now. Prospective purchasers would have to negotiate a sale price with the tenant, then a rent level with the landlord. Landlords who want to drive tenants to bankruptcy or block the sale of their homes would simply negotiate in bad faith with the prospective purchasers, and these tenants would effectively lose the right to sell their homes and become trapped in a tenancy relationship they no longer want.

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I've made fairly extensive submissions on the cap pass-through, but I'm not going to read through them. I'll leave them for the committee to read. I'm just going to summarize some of the recommendations that we have on other suggested changes in New Directions: that the landlord be required to pay 6% on last month's rent deposit annually, and that all other deposits remain illegal; that there be a complete code of procedure for landlord and tenant matters; that privacy rights be enforced and entry by landlords or their agents be strictly limited.

Rent must be controlled for units rather than tenancies. We recommend a property standards system controlled by the provincial Legislature, with municipalities and townships having sufficient budgets allocated to bylaw enforcement of property standards. Rebates and abatements of rent should be retroactive through the entire period that the problem has existed for the tenant.

The delivery system: The jurisdiction of the superior courts to adjudicate the Landlord and Tenant Act should be maintained. A procedure for voluntary mediation in the court process should be instituted.

It's our submission that the proposals are incomplete and vague and are substantially inappropriate for the tenants in Ontario. We would ask that the proposal not be proceeded with and that the government do extensive community consultations and public hearings prior to any new legislation.

Thank you for your time.

Mr Marchese: Ms Boulding, thank you for your submission. I want to ask you a question, because you're a lawyer and you might have some experience in this field.

Obviously the Conservatives and the builders and the developers think we're wrong, that we are misguided and that rent controls really have ruined this province, and they make fun of us when we say the contrary. They think the market should govern the issue of rents. Are we so far out of whack? Are we not in tune with what people are feeling or saying that somehow makes them think this? Where are we with this? What is your opinion?

Ms Boulding: I think the problem is that we're talking about a social issue and we're trying to do it on some kind of economic cost-benefit, and it doesn't fit. Everybody needs a place to live, and not everybody has the money to afford to bargain in the free market in the way business people talk about it. There are lots of areas in our society where free market bargaining isn't allowed, and it seems to me housing is of such a fundamental importance in our world that it should be exempted. There has to be a way that people can afford to pay where they live and also eat and dress themselves at the same time.

Mr Marchese: But they say, "Let the private sector build and give them all the concessions they need,"

because there's a whole list of concessions we need to make as governments to make that happen, "and afterwards, we'll just give them shelter allowances." Doesn't that take care of it?

Ms Boulding: I don't know where the shelter allowance is going to come from, because I haven't seen a proposal from this government to replace rent controls with a shelter allowance. So I think we're in dreamland there.

Mr Marchese: Just to be fair, we're paying \$2 billion in shelter allowance at the moment. It's not as if it doesn't exist. We're doing that already and we're subsidizing a lot of private sectors with it. They're presumably saying: "Let's continue to increase that, but let's get the private sector to build and let's just give them a shelter allowance and that will take care of things." If I'm not correct on this, please correct me when it's your turn. So that's the way they feel it should be corrected: Government should not be building. Cooperatives are bad because we're wasting money. It's true they get a mortgage and they'll pay it off in 50 years, but it's still bad. And non-profit homes are still bad, even though one of the developers said, for some of them, we're going to have to build because they can't afford to do it at that price. Do you have a response to some of that?

Ms Boulding: I still take the position that tenants need protection, and the most effective means we have at the moment is to control the amount of increases that the landlord can put on their tenancy.

Mr Wettlaufer: Thank you for showing up and making your presentation. One of the things I have trouble grappling with, because I hear so much from the constituents in my constituency: We know that 80% of the apartment units are situated in apartment buildings of four units or less, or rented facilities of four units or less. I hear so often that the people who own these buildings are small landlords. They're individuals like you, me, Marchese. They are relying on this for their income in the case of pensioners. Yet when it comes that a tenant does not want to pay the rent for two, three, four or five months, how do these people, without a smoothening of the eviction process, a speeding up of the eviction process, how do these pensioners pay for their mortgage, how do they pay for their taxes, how do they pay for utilities? You've said you oppose the speeding up of the eviction process or making it easier. I'd like some input on it.

Ms Boulding: If your rent is due on September 1 and you don't pay it, on September 2 you can be served a notice by your landlord. How much speedier would you like it to be?

Mr Wettlaufer: How long then does it take to evict that individual?

Ms Boulding: After you give the initial notice that they haven't paid rent, they have until the date in the notice to pay the rent, and then 20 days after that you can take them into court, and if they don't have a dispute and appear and pay the rent into court, then you get your writ of possession.

Mr Wettlaufer: What happens if they pay into court?

Ms Boulding: Then there's obviously a legitimate beef and it goes in front of a judge who decides it.

Mr Wettlaufer: What happens if they pay just before the court date?

Ms Boulding: Then the matter's over with and the landlord has received their money.

Mr Wettlaufer: So then they can do it the next month.

Ms Boulding: No. There's also a clause for persistent late payment. So if you have a tenant who for some reason likes to get notices from you and waits until the notice to pay the rent, which hasn't really been my experience, then you can evict them under another section of the act, which isn't the arrears section that you are speaking about but persistent late payment. So the landlord is protected there as well.

Mr Wettlaufer: Could you define "persistent late payment"?

The Chair: Mr Kennedy.

Mr Kennedy: Thank you for your presentation. There are some parts that you went over to allow us the time for these questions, but they kind of draw on your final conclusions about the proposals being incomplete, vague, and I'll leave the appropriateness alone for the moment. But you seem to be saying in the case of land-lease tenants that this government doesn't know what it's talking about. A lot of the provisions that they've put in there which are specific to those provisions aren't necessary because they're already in legislation. Is that correct?

Ms Boulding: Yes.

Mr Kennedy: Why do you think this government is making new proposals on top of legislation that already exists and accomplishes the same thing or accomplishes it adequately?

Ms Boulding: I'm not sure who the authors of New Directions are, so it's hard for me to comment, but they have suggested changes and protections for them that are already in existence, specifically around the For Sale and other issues in the mobile home park —

Mr Kennedy: Right. Having a For Sale sign up or having a bulletin board instead — that's already there.

Ms Boulding: Yes, that's already been taken care of and there are already sections in the Landlord and Tenant Act and the Rent Control Act that specifically recognize the differences between mobile home parks and other units.

Mr Kennedy: I guess you've already said it, but what does that tell you about the due care that the ministry has put into these proposals?

Ms Boulding: It's ill considered, in my opinion.

Mr Kennedy: There was a specific mention you made that was intriguing about the 6% interest payment. Is that not in law currently?

Ms Boulding: Yes, it is, but there's a suggestion —

Mr Kennedy: It's not covered in the proposals?

Ms Boulding: I didn't deal with it other than to suggest it remain, but there is a suggestion that it will not be there any longer. Currently, the landlord can request and receive up to one full month's rent, which is the first and last that everybody talks about. So they can get up to that full month's rent and they're required to pay 6% per year to the tenant because that month hasn't yet been lived. It's some point in the future.

Mr Kennedy: Right.

Ms Boulding: So while they hold the money, they have a little interest.

Mr Kennedy: And that's not necessarily provided for in the new proposals. Would it be too much to characterize the overall new proposals and legislation as reckless in how they've been put together?

Ms Boulding: I wouldn't disagree with you, but I think there needs to be some more work done and I think they need to be speaking to more tenants and more landlords and also reviewing what's already there.

Mr Kennedy: Thanks very much.

The Chair: Thank you very much. We appreciate you coming here this afternoon, Ms Boulding, and making a presentation to us.

1600

ONTARIO RESIDENTIAL CARE ASSOCIATION

The Chair: The next presenter is Mitchell Wexler. Good afternoon, sir. Welcome to our committee. We'll get you to introduce everybody to begin with.

Mr Mitchell Wexler: My name is Mitchell Wexler. I'm a tenant in the city of Toronto. I'd like to introduce to you Rick Winchell of the Ontario Residential Care Association, who I will allow to use my time before the committee today.

Mr Rick Winchell: Thank you for the opportunity to address you this afternoon. Joining me is Ms Debbie Doherty, an association board member and a director of operations with International Care, which is a company of retirement residences both in Ontario and British Columbia.

The Ontario Residential Care Association includes more than 250 residences, employing about 10,000 staff who provide personal care services for about 15,000 residents. Each of you is being handed a detailed association position paper involving the proposed legislation. Due to the time limit I'll restrict my comments to summary points.

In general we commend the government for recognizing the important differences between apartment dwellers and residents of care homes. As you know, apartment laws deal with units; care homes focus on people. For that fundamental reason we've never supported the application of housing laws that restrict our ability to adjust personal services to meet an individual's changing needs. Unlike apartment tenants, accommodation is secondary to care services for people in retirement homes. People move to a retirement setting not as a lifestyle choice but because of a care-driven need. We've always contended that rent control in care homes is an unnecessary and artificial consumer protection. You should also know that the average annual rate increase across our sector has historically been lower than the statutory guideline.

We urge this government to eliminate the meaningless exercise of splitting accommodation from care services and exempt care homes from rent control altogether. Only then will the care home sector be able to focus attention on the most important consumer benefit, that being the best service for the best price. We contend that the abundance of supply that enables consumers to enjoy a full range of care home choices is best protected through

deregulation, where providers are forced to constantly add value in order to effectively compete.

We further believe that consumer protection is optimized through full information disclosure of what is and what is not included in the basic service package. Our association fully supports the need for better-informed consumers. In fact, our experience demonstrates that the combination of aggressive consumer education and full disclosure renders the concept of rent control redundant.

Separate from the proposed legislation, we support the removal of care homes from the Rental Housing Protection Act. From the outset we've considered this legislation to be restrictive and inappropriate. The application of the RHPA, initially introduced to limit condo conversion from apartment stock, stands as a superb example of what happens when laws designed for one sector are thoughtlessly applied to another. You end up with the proverbial square peg getting stuck in the round hole and absolutely nobody benefits.

As you know, security of tenure in care homes restricts providers' room access for night checks even when requested by residents. This government wisely recognizes the absurdity of restricting room access, and on behalf of thousands of residents and family member designates who have insisted on room checks over the past 24 months we extend our sincere thanks for understanding and rectifying this problem in the proposed legislation.

The transferring of residents to more appropriate levels of care is also a much-needed change recognized by this government. The New Directions paper asked about a formal process for transferring residents to another facility. You're aware that such a process exists within the long-term-care continuum. Admission to any long-term-care facility is contingent upon an assessment through a regional placement coordination service. We recommend that retirement homes be recognized and formally included in the mandate of all placement coordination services.

We submit, however, that a serious flaw exists in the proposed legislation. Nowhere is there recognition for a growing problem involving those residents who refuse to move to a higher level of care even when it's clear that we can no longer safely meet their needs. We have expressed our concerns to ministry personnel and we've recommended that in these cases residents be required to go through the PCS process. We have further suggested that in cases where a person's needs exceed the resources of a retirement setting, that person should be required to take the first available long-term-care bed. This is very important, because in some regions of the province waiting lists into long-term-care facilities exceed a year.

Those who argue that a requirement to accept the first available long-term-care bed compromises an individual's right to security clearly miss the point. Retirement home residents can and do contract for additional private duty nursing instead of accepting a long-term-care facility placement. However, it's the group of residents who refuse both the private duty option and the long-term-care placement option who pose the most danger to themselves and in some cases to others.

We believe a person's wellbeing should always take precedence over security of tenure. We believe that

appropriate care treatment is fundamental and an important right that is in everyone's best interests.

In cases involving transfers to settings which are not part of the long-term-care continuum, and therefore would not involve placement coordination services, we've suggested to ministry staff that an assessment by a house physician would be a fair and appropriate approach.

There are additional suggestions we've discussed with ministry staff which we believe provide important protections for all residential care clients.

First, the proposed legislation fails to address a key issue involving rent increase notices. Currently operators are required to distribute notices directly to each resident. There is no provision to allow for a designate. Increasingly we are approached by family members responsible for finances, very often on an informal basis. For these people we suggest that notices be given to anyone identified as a designate in the resident's tenancy agreement.

I can assure you that this minor amendment will be a major source of relief for residents and families across Ontario. Of course, in those cases where both a resident and a designate request notices, care home operators are happy to respect this directive. We understand the ministry is aware of this situation and is attempting to address the situation in the legislation.

Secondly, it's very important that admission to a care home be contingent upon accepting a total service package. Allowing residents to unbundle services from accommodation clearly compromises the benefits inherent in a congregate setting. Operators would be unable to properly staff key positions such as dietary, nursing and activation if residents were entitled to unbundle their individual service packages. In the best interests of all residents, a clause in the legislation should allow providers to require, through the tenancy agreement, that services not be unbundled from accommodation.

You can appreciate the impossible task facing providers if people were allowed to arbitrarily opt in or out of some or all services. We believe that the full service package detailed in a resident's agreement must be a condition for granting tenancy or continuing to permit occupancy of a care home rental unit.

A tenancy agreement should address this situation, but it's important that nothing in the legislation be construed that might prohibit this requirement. That is why we'd like to see a specific clause confirming the strength of the resident's agreement included in the new legislation.

In the main, our members across Ontario strongly support the changes proposed under the care home section of the tenant protection legislation. We, along with thousands of family members and residents, welcome the logical, clearly thought out improvements that this proposed legislation contains. We believe the care home section resolves several oversights in the current legislation.

Together with the recommendations we offer this committee, it's our sincere belief that the interests of all residents will be best served under the proposed tenant protection legislation. Thank you. We'll happily field questions.

Mr Smith: Thank you for your presentation and your qualified support at least for the home care provisions in

the discussion paper. Over the last couple of days we've heard a little bit about the rent registry, and I note on the first page of your summary in your general response under item 2 you indicate you support the abolition of the "rent registry — something which has been ineffective from the outset."

Would you share with the committee why you would make that statement and what experiences you might have to come to that conclusion.

Mr Winchell: The rent registry has not been very effective from its introduction. But more important, from our standpoint, we have constantly argued that the application of apartment laws on care homes takes away an enormous amount of attention from what we do best, taking care of our residents.

In terms of the rent registry, we've been forced from the outset to separate services from accommodation but we've never, ever had the formula by which to work with that separation. More important, the separation of services from accommodation had done nothing to benefit the families or create more disclosure for residents. It's an artificial benefit; it gives no benefit whatsoever. I can tell you unequivocally that residents and family members across the province keep scratching their heads: "Why is there more paperwork? Why the heck is there more paperwork?"

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Mr Hardeman: You said that the care home should be a package deal, that the placement should not be allowed to pull it apart. I can understand the problem you have in providing someone with services, and some would be impossible to pull apart, but don't you see maybe a need, that some services could be provided that not everyone may wish but some would, and that somehow there should be an opportunity to have some optional and some mandatory?

Mr Winchell: Those options exist today, sir. A resident would contract for a basic level of service and then there would be additional services they can purchase as needed. Depending on the need, they have that option right now.

Mr Hardeman: So your presentation is that this would continue —

Mr Winchell: That would continue.

Mr Hardeman: — not that you would package it all and it's so much and you can't pick and choose what you want.

Mr Winchell: No. We support the idea of choice but we don't support unbundling the basic service.

Mr Kennedy: I just want to know what you think the problems may be in the part that addresses how much leeway there is in terms of bed checks and so on. How formal does that understanding need to be?

Mr Winchell: With the bed checks?

Mr Kennedy: Yes. Could it present problems in terms of privacy, in terms of an interpretation by staff and so on?

Mr Winchell: I think it's very important to understand that we only support the concept of bed checks when it's requested by a family member or a resident. We have always historically respected those residents who don't want us to come and check on them at night, but since

the introduction of the Residents' Rights Act we've had countless requests for staff to go in and do night checks by the resident or by the family designate, and of course the law restricts that.

Mr Kennedy: Would that be an agreement specifically in writing with specific times?

Mr Winchell: Yes.

Mr Kennedy: Would it always be with the concurrence of the tenant? Is that right?

Mr Winchell: It would be at the request of the tenant or the family designate, yes. It would be identified and signed off in the tenancy agreement.

Mr Kennedy: When you look at the provisions that say if facilities are demolished or renovated, what would you think should be the comparable accommodation for residents, and should there be a compensation clause as well for when facilities are taken away?

Mr Winchell: A compensation clause in terms of replacement?

Mr Kennedy: In terms of a facility condition comparable to what's there now, first of all what would you see as comparable? Should it also include the prospect of financial compensation?

Mr Winchell: No. I think our position has been from day one, regardless of whether we're taking a building down or we're transferring someone, we will work with the residents and family members to ensure appropriate replacement of that person in a comparable setting.

Mr Kennedy: That should be a protection they should have in the law?

Mr Winchell: We have no problem with that at all.

Mr Marchese: Mr Wexler, are you a tenant?

Mr Wexler: Yes.

Mr Marchese: Do you have any concerns about this legislation?

Mr Wexler: I'm here because I'd like the Ontario Residential Care Association to get their views across.

Mr Marchese: I see. You support the submission, obviously, and the concerns that he's raising?

Mr Wexler: Yes, and I defer all the questions to Mr Winchell.

Mr Marchese: Okay. You raised the point about the rent registry in the sense that you haven't found it effective and it takes away from what people do best. I think it's been very effective, at least tenants say it is. They see that as a protection for them because in the past, without that, you wouldn't have a sense of whether or not a landlord was charging an illegal rent or an unduly high rent. If there's a registry and they're charging a certain amount, you as a tenant feel protected that you're not going to get into a situation where you were renting at \$600 before and now they rent at \$700. I'm not sure how you see that as ineffective.

Mr Winchell: Okay, but again I think you're falling into the classic trap of comparing us to apartments. We are far from apartments.

Mr Marchese: I see.

Mr Winchell: We provide far more than just units. In fact, the secondary consideration is the unit itself. It's the personal care assistance that is —

Mr Marchese: I appreciate that.

Mr Winchell: From our standpoint, absolute disclosure with prospects is something we support entirely. For example, our association has a consumer hotline. We encourage people to go out and ask the right questions: Who owns the facility? How long have they been providing services to seniors? What's the history in that particular setting for rent increases? What's the policy for rent increases in the future? From our standpoint, the combination of consumer education and full disclosure is the best protection our residents can get.

Mr Marchese: I appreciate full disclosure at least. In saying that, it makes us feel that obviously you have nothing to hide. On the other hand, I'm a supporter of the rent registry. I think it's a useful instrument for everybody. You're against rent control as well.

Mr Winchell: Yes, I am.

Mr Marchese: You argue that it's simply not effective either; it's a problem.

Mr Winchell: I would ask you to tell me how any of the residents' rights laws have improved the quality of service delivery at a retirement setting. I can tell you unequivocally it hasn't done a darned thing.

Mr Marchese: But as you said, they're two separate issues, right? We're not disputing whether or not you're giving good care; that's a separate issue. We deal with that as an issue and we deal with rent increases as a separate one. That may not improve the care, but finances are clearly connected to people's lives.

Mr Winchell: Absolutely.

Mr Marchese: How you do not interconnect them is incomprehensible to me. Care and whether people can afford it and whether they're being gouged and whether they're getting unfair increases are, for me, interlinked. Don't you agree?

Mr Winchell: Again, I go back to the fact that we work very closely with the consumers to help them ask the right questions. In fact, if there's a problem with a retirement setting and it happens to be a member of our association, we'll step in to resolve that problem. We'll work on behalf of the residents and families.

Mr Marchese: That's laudable, but we've heard from many tenants where you don't have that kind of situation. We hear a lot of people who are saying, "We have a great relationship with our tenants." It seems wonderful that such things exist out there in society. On the other hand, the reason why you have tenant organizations and the reason why you have so many people advocating on their behalf is because there are so many abuses in society. I understand you're working at it, but it's not working out there.

Mr Winchell: I would respectfully submit to you then that the previous government was focusing on the shoelaces as opposed to the whole tuxedo.

Mr Marchese: Is that right?

Mr Winchell: The reason I say that is because the delivery of quality services is the number one priority and that's the focus that we should be looking at.

Mr Marchese: So letting the market —

Mr Winchell: Absolutely. Letting the market effectively compete and add service.

The Chair: Thank you very much. We appreciate your attendance here today and your presentation.

QUEEN STREET PATIENTS COUNCIL

The Chair: Our next presenter is Jennifer Chambers, a facilitator at the Queen Street Patients Council. Good afternoon, Ms Chambers. We appreciate you being here this afternoon.

Ms Jennifer Chambers: The Queen Street Patients Council is a non-profit board of psychiatric consumers and survivors. I'm staff for that council. The council's mandate is to represent people who are or have been patients in Queen Street Mental Health Centre or people with a psychiatric history who live in the Queen Street catchment area.

We try to bring forward to decision-makers like yourselves the issues of people who are very poor, people who are struggling with the issues that brought them into the system as well as with the system itself, and who must cope with few and often very grim options available for housing.

Our people live very close to the edge and we hope our presentation here today will prevent more people being pushed into homelessness and, from there, to an early death.

We'll focus our comments on three areas: economics, tenants' rights and recommendations for accommodation. That's "accommodation" in both senses of the word. I'll summarize the report and hope you might have a chance to read the whole thing at your leisure.

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Even with some rent control, people on social assistance will be hard-pressed to meet housing costs. The sitting tenants will have their rent raised by the current guideline of 2.8% and may also have their rent raised up to 4% for capital expenditures and an unlimited amount for increases related to operating costs such as taxes and utilities. With major renovations and conversions no longer requiring municipal approval, it's not unlikely that capital expenditures will often reach maximum levels in preparation for such conversions. When even tenants in rent-controlled units can have rents raised, at a conservative estimate, 7% in a year, people on social assistance will easily be priced out of the housing market. This is still in reference to tenants with protection.

To offer an example of such a tenant in concrete terms, it's difficult to find a room in Toronto for under \$350 a month. For a person receiving \$540 a month social assistance, a 7% increase on \$350 would be an extra \$24.50 a month, leaving \$165.50 a month for food, non-prescription medicine, drug user fees, toiletries, transportation, telephone, clothing etc.

Many psychiatric consumers and survivors depend on daily contact with others; indeed, who doesn't? Most people want to be close to their sources of support and often arrange their housing accordingly. The need to stay put to avoid rent increases will mean that people will often have to choose between spending money on transportation to avoid social isolation and being cut off from their supports and other basic necessities like food. This greatly increases the chances of vulnerable people ending up back in an institutional setting, which is, as pointed out, far more expensive than providing people with affordable housing.

The plan for new tenants is for "the landlord to negotiate the incoming tenant's rent without regulatory restriction." A negotiation process such as this puts vulnerable people at a severe disadvantage. It's one thing to figure out what housing a person can afford and to go out and look for it. It's another thing indeed to be involved in a strange and difficult process that involves negotiation, perhaps having to bid for one's housing. The Toronto Star recently reported the case of a psychiatric consumer-survivor who was taken advantage of by salespeople who came to their home and who ended up buying something far more expensive than they can afford.

Economically, it will obviously be to the landlords' advantage to encourage sitting tenants to leave their homes. While there will be some protection for tenants against such harassment, even the economic disincentives proposed in this legislation are inadequate. For example, for the owner of a high-rise a \$25,000 fine is not much disincentive when they can so easily be compensated if they get rid of their sitting tenants by increases in many people's rents.

Another apparent protection for tenants proves not to be so on closer inspection. Municipalities might be in a better position to enforce necessary maintenance by the landlords under this legislation and to recover their costs through taxes, but it will be the tenants who will bear the burden of these taxes and who will end up therefore having to pay extra to have their dwelling simply be habitable.

The economic reasoning behind the abolition of rent control supposes that market forces will work things out. More housing units will be built because it will be profitable for landlords to do so. Having more units available will mean landlords will keep rents at a reasonable level to attract and keep tenants in a competitive market. So the argument goes. But this doesn't work for poor people and it especially doesn't work for poor people in Toronto.

This legislation is being introduced in an environment in which the building of non-profit housing has been stopped, rent subsidies are in danger of being taken away and social assistance has been cut. In Toronto, as you know, the vacancy rate is 0.8%. This legislation may encourage some construction of new housing units, but it won't be housing for the poor. Instead, the growing numbers of people in Ontario in desperate poverty will be competing for fewer affordable housing units as landlords are free to renovate and convert units to more expensive housing.

What recourse is there for extremely poor people? Shelters and psychiatric institutions are two places people are likely to end up, both of which cost a great deal more than affordable housing. It costs over \$1,100 a month for someone to rely on shelters. It costs over \$10,000 a month to keep someone in a psychiatric institution, or at least in Queen Street Mental Health Centre. Yet some people arrive at Queen Street because the squalid boarding house they're in has finally made their burden unbearable. Some people stay in institutions because no housing has been found for them.

The Queen Street Patients Council helped a patient in a wheelchair who'd been in Queen Street for over 30 years find housing. It wasn't easy to find this housing.

We had to resort to calling the mayor's office, among other things. In the long and short run, the results of having no housing or horrible housing or housing that costs more than be managed will cost society far more than decent, affordable housing. It will cost in human and social terms, and it will cost more money.

The Residents' Rights Act, Bill 120, established a process for landlords to go through before they could convert, renovate or demolish care homes. There's no indication in this discussion paper of how suitable alternative housing will be evaluated as such, what type of notice would be required and how landlords' actions will be monitored to ensure the changes they're making don't simply rid them of people with certain disabilities.

One wonders about the relationship between ministries. The Ministry of Health's mental health policy recommends affordable housing. Does the Ministry of Housing have any accountability to health if health has to pick up the far greater tab for Ontario's unhoused population? Even inquests cost more than housing would have cost for the people who died.

Looking at tenants' rights, by "rights" we mean equality for tenants who are also psychiatric survivors; that is, equal access to due process and an equal process. A streamlined dispute resolution process is a good idea if it's adequately funded, if it's staffed by impartial and skilled workers, and if it's universally accessible.

The recent inquest into the deaths of three homeless men on Toronto streets made some recommendations to that effect. They recommended that to have staff with a greater sensitivity to the people they serve there should be more hiring from the communities represented by their clients. As part of a dispute resolution system, this would also increase accessibility to the system for many tenants if outreach and rights education were part of the funded process.

The dispute resolution process should not charge a fee, as even \$20 is too much for people on social assistance to afford.

It would be a good idea to have further clarification around privacy issues, such as a landlord's entry to a tenant's home. In care homes any agreement about right to entry should be voluntary on the part of a tenant, not a condition of housing. In any case, it's long been the position of psychiatric consumers and survivors that supports should be attached primarily to the individual, not to their housing, because people often change their housing and shouldn't have to change their supports at the same time. Agreements about entry for care would therefore be with the individual or organization providing support, not with the landlord per se.

The Residents' Rights Act gave tenants in care homes the same rights as other residential tenants. We submit that the reversion to inequality proposed in this legislation is being considered only because of a prejudiced perception of people in care homes. A fast-track eviction process for people in care homes seems to suppose that people in care homes are more problematic than other members of society, but there's no evidence that this is the case. If someone is actually a danger to other tenants, there is legal recourse. In fact, the patients council

assisted one man to relocate who'd been forbidden to return to his housing by the court.

One of the suggestions in the discussion paper is that landlords in care homes will have the right to "transfer residents to alternative facilities when the level of care needs change." This measure is unnecessary, is invasive, violates people's rights as tenants and treats people in care homes as if they're universally incompetent to make their own decisions. It also violates the Health Care Consent Act and possibly the Long-Term Care Act. The idea of allowing tenants in care homes to give only 30 days' notice if their care needs suddenly change is a far more appropriate suggestion, as long as it is the tenant's decision.

This proposed legislation puts landlords in an idea position to harass, intimidate and physically remove tenants from their homes when it is to the landlord's advantage to do so. It's far too common an occurrence when tenants try to assert their rights for tenants' care needs to suddenly change. This happens in psychiatric institutions and was one of the motivating forces behind the creation of Bill 120.

If tenants in care homes need additional help in their home, this can often be arranged. Once again, we emphasize the stupidity and waste of putting someone in an institution who could manage outside if allowed and supported to do so. Think of the money that could be saved of the \$10,000 it costs a month to keep someone in Queen Street if less than a quarter of that amount was designated for housing and supports that would avoid institutionalization. Once again, we hope that the housing and health ministries are heading in approximately the same direction.

A smaller point: Exempting short-stay facilities from legislation poses some danger that we ask you to consider. The criteria should be narrow and specific in this area.

I'll skip to the recommendations that we're making:

(1) Retain rent control. However, we don't actually expect that this is going to be given serious reconsideration despite the consequences for many members of society. This being the case, we hope the government will adopt some measures to accommodate vulnerable people in this situation.

(2) Keep the Residents' Rights Act. The new, decontrolled system will already exert unequal pressure on psychiatric consumer-survivors and other vulnerable people. Please do not compound this by legislating inequality for some tenants. Legislation already exists to deal with many of the situations raised in this discussion paper. Tenants who need more care can either get it where they are or decide to move elsewhere. If they're incapable of deciding, a substitute decision-maker will decide for them. Landlords should not be making care decisions. Dangerous tenants can be dealt with under the law, as with all people. Evictions should follow due process, as with all tenants.

Eviction prevention should be the goal, not fast-track evictions. One of our people died from a lack of protection under the Landlord and Tenant Act. Before Bill 120 was passed, a colleague of mine heard from a distraught father. It was just before Christmas and his son had been

evicted from Canadian Mental Health Association housing because his room was so messy. He called back a few days later to tell us his son had committed suicide. A better process and a useful support system could have saved that boy. In fact, another colleague of mine just did that recently. He helped clean up someone's room to save them from eviction. Equal process and funding for individual supports will keep many people housed.

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(3) The recommendation is to develop low-cost housing and to provide rent subsidies. In the unlikely event that building will boom without rent control, low-cost housing will not be the sector expanding. Toronto has a vacancy rate of 0.8%. It is a landlords' market. Perhaps the profits made by a landlord when rent control is removed could be taxed to build non-profit housing and provide rent subsidies. Toronto and any other area with a vacancy rate under 1% should receive government assistance in the housing sector.

In the following paragraph I give a description of a community that uses rent subsidies and operates very well. I won't describe it in detail right now.

In an environment of rent control, social assistance cuts, massive unemployment and a vacancy rate under 1%, the government must take some responsibility for people not being able to find affordable housing. Even if you believe the market will provide in the long run, in the short run government assistance is required.

(4) We ask that you ensure equal access to the dispute resolution process. These are some of the measures discussed earlier.

(5) We ask that costs for repairs and maintenance required by law should not be passed on to the tenants.

(6) We suggest an advisory committee should be struck with representatives from all relevant ministries, tenants, people in care homes, landlords and developers and community groups to review this legislation and consult on the impact of its implementation. This recommendation is supported by a similar recommendation resulting from the inquest into the deaths of three homeless men.

(7) Finally, we suggest that advocates should be funded for tenants. It's too much for some people, such as many psychiatric consumers and survivors, to deal with negotiating rents, possibly being harassed out of a controlled unit, losing their rights as tenants in care homes etc. Tenants in Ontario, especially vulnerable tenants, are going to need some help to deal with these changes.

Mr Sergio: Ms Chambers, you're very familiar with the proposed package for tenants. Do you feel that more protection is put on the unit or the tenants as it now exists?

Ms Chambers: I feel that there will be less protection for the tenant than now exists. Is that what you're asking?

Mr Sergio: There is less protection now. The minister said that himself yesterday, that the landlords have the upper hand on tenants now. But the proposed package, how do you see it? This will be placing more protection on the unit or the tenant?

Ms Chambers: I believe they're inseparable to an extent, given that it's the tenant who's in the unit, and I think protection for tenants is reduced by this legislation.

Mr Sergio: It's reduced. Okay. The proposed legislation also proposes to eliminate six statutes and incorporates them, if you will, within one, but also eliminates all of that protection. How will the rights of tenants be protected without the benefit of those statutes in there?

Ms Chambers: Without the benefits of the statutes of the Residents' Rights Act?

Mr Sergio: Yes. For example, the Rent Control Act is going to be killed completely. Also being eliminated is the Landlord and Tenant Act, the Residents' Right Act as it relates to home care, the Rental Housing Protection Act, the Land Lease Statute Law Amendment Act and also the vital services act.

Ms Chambers: I believe that particularly psychiatric consumers and survivors will be left extremely vulnerable by the abolition of these acts. I think psychiatric consumers and survivors are especially vulnerable to being among the poorest members of society, to any increase in housing costs, especially vulnerable to any harassment by landlords, which is recognized to be a danger of this legislation. I also believe that psychiatric consumers and survivors should have the same rights as other tenants under the Landlord and Tenant, which is what the Residents' Rights Act provides and which people would lose if that was abolished.

Mr Marchese: Ms Chambers, welcome and thank you for your presentation. I want to thank you for the ongoing advocacy that you're doing. On page 6, you say that advocates should be funded for tenants. Good luck. This government is not big on advocacy. If you recall, they eliminated the Advocacy Commission —

Ms Chambers: Yes, I do recall that.

Mr Marchese: — and they are against rights advice generally. As you may know, they've defunded some of the tenants' groups because they don't like rights advice, they don't like tenant groups that support people and give them advice and all that. It's typical of this government, otherwise they wouldn't be cutting these kinds of activists who are there to support the very people you're talking about. If people like yourself aren't there to advocate for psychiatric survivors, who's going to do it? They've eliminated people who would do that on a full-time basis. So as much as you state a hope that the government will adopt some measures to accommodate vulnerable people in this new system, I'd like to nurture it, but I'm not sure what other advice I can give you around that.

I wanted to comment on some things you talked about in your proposal. In terms of rent control, we believe it gives basic protections to people like that, and you said that in spite of these rent controls, people who have such inadequate incomes are getting high increases, up to 7%. Imagine what will happen without the controls. They argue, "Don't worry, the market will take care of it." Do you really believe the market will take care of people like the ones you're advocating for?

Ms Chambers: I believe the market might in the long run take care of the upper-income levels of society; I don't think the market's going to provide for people living at the lowest income level.

Mr Tilson: Ms Chambers, thank you very much for your comments. I was interested in your recommendations, particularly recommendation 5 on page 6. I hope

the thrust of your paper is with respect to vulnerable people and not tenants across the board, some of whom are very poor, some of whom are very rich and some of whom are in the middle.

Ms Chambers: It is, yes.

Mr Tilson: I'm hoping for that, because your comments say: "Costs for repairs and maintenance required by law should not be passed on to tenants. The proposed legislation allows this through municipal taxes." What in fact the ministry said on the opening day was that more than 10% of all rental stock needs substantial repair work. That's across the province, I assume. More than \$10 billion in repairs is needed to rental buildings across Ontario. They talked about the number of outstanding work orders. In other words, the housing stock in this province is basically very old, much of it, and in great need of repair. Could you elaborate on that point? Surely you're not saying the general taxpayer should pay for all of these repairs. Surely that's not what you mean.

Ms Chambers: No, I'm not saying that at all. To answer your first point, I'm here to speak for the poorest and most vulnerable members of society. I'm also talking in that point specifically about the section on maintenance in which it talks about the municipality coming in to do work orders for the landlord when the landlord hasn't done them and then suggests that the municipality could recover its costs through taxes. Given that even for rent-controlled apartments people's rent can be increased if the landlord's taxes are raised, my concern is that in those specific cases tenants would end up paying for repairs that simply make their homes habitable, which should be expected under their existing rent.

The Chair: Thank you very much. We appreciate you being here this afternoon, Ms Chambers, and your involvement in our process.

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METRO TENANTS LEGAL SERVICES

The Chair: Our next presenters represent the Metro Tenants Legal Services: Bill Green, the director of the board; Jacquie Buncel, community legal worker; and Toby Young, staff lawyer. Welcome to our committee.

Mr Bill Green: My name is Bill Green. I'm one of the directors of the board of the Metro Tenants Legal Services.

Metro Tenants Legal Services, the MTLs, is a community legal aid clinic formed in 1976 to advocate for rights of tenants in Metropolitan Toronto and to assist tenants in enforcing those rights. We give information and advice to tenants on our telephone information lines, in our offices and by providing a tenants' duty counsel at landlord and tenant court. We also provide legal representation for low-income tenants and we deliver public legal education, targeted especially to groups that generally lack access to information and advice concerning their housing rights.

We have represented tenants since the first rent review hearings were held in 1976, through successive forms of rent regulation. Our experience, as well as our recognized commitment to fairness, have made our voice a credible

one in the two-decade-long debate in this province over tenant protection.

During the last several years, we have identified several trends in the problems tenants bring to our office.

More evictions: The most common problem for which tenants seek the help of MTLs is eviction. Tenants seek our legal advice at all stages of the eviction process: when they have received notices that they are behind with their rent — the most common reason for evictions is arrears of rent — when the landlord takes them to court, and when they have received a sheriff's notice and they know it's just a matter of days before the sheriff comes to change the locks on the doors.

Indeed, during the last year there has been an increase in economic evictions. That's when tenants have to move because they simply cannot afford the rent. Because of the government's cut to welfare rates by 21.6%, many tenants receiving social assistance cannot afford their rent. Metro Community Services has conducted research on the affordability problems of tenants. They indicate that almost 60% of Metro tenants pay more than 30% of their income in rent, and half of these pay more than 50% of their income in rent.

In April 1996, some 66% of social assistance recipients renting in the private market had shelter costs above the shelter maximums. Families have been particularly hard hit. After the benefit cuts, 83% of all two-parent families with two children had shelter costs above the shelter maximum.

With such severe affordability problems, the inevitable outcome is that people lose their homes. Indeed, Metro Community Services' research points to this finding: Between January 1995 and January 1996, there was a 33% increase in the number of applications for terminations filed at the Ontario court. There was also a 16% increase in the number of executed evictions. That of course is when the sheriff comes and locks people out. This also was between January 1995 and January 1996.

Deteriorating maintenance: Over the past few years we have seen a drastic decline in the standard of maintenance of buildings in the Metro area. Where I live, 35 Walmer Road, is a classic example of the maintenance problems rampant in many of the buildings in downtown Toronto. Poor management has led to elevators constantly breaking down, problems with garbage pickups, security issues, break-ins, infestations of insects and mice, and other problems.

Declining supply of rental units: A third significant trend we have seen is a critical shortage of affordable housing options. Metro Toronto has the lowest vacancy rate in Canada at 0.8%, compared to the Canadian average of 4.3%. Furthermore, there is a critical shortage of housing for low-wage and poor people. This is evidenced by the waiting list to get into public housing. Currently over 50,000 families are on that waiting list for public housing. With the government's cancellation of its non-profit housing program and the cancellation of 385 projects last fall, the government has made its own contribution towards creating more homelessness in the province.

In addition, through the Land Use Planning and Protection Act, the government has reduced the supply of

another source of affordable housing, basement apartments. This act will discourage homeowners from installing an apartment in their houses, as apartments in houses will now be illegal in many municipalities. Instead of encouraging the construction of new rental housing, the government is introducing measures to discourage it.

Erosion of support services and options for tenants: Indeed, many of the measures which this government has taken to date are the opposite of tenant protection. The government's cuts to the welfare rates have resulted in many tenants losing their homes. As well, the cancelling of non-profit and co-op housing projects has meant the loss of affordable housing to communities. In addition, this government has cut funding to organizations which provided services to tenants and which worked towards increasing housing options in their communities. Because of these cuts, MTLs itself has lost two full-time and one part-time staff member and has had to reduce our hours of public information service. With these kinds of measures taken by this government in its first year, it is no wonder many tenants and tenant supporters are sceptical when the government introduces a plan called "tenant protection package."

New Directions and the tenants of Ontario: From our place of knowledge and our expertise on these issues, we believe that it is vital that we tell this community that we are categorically opposed to the government's approach as outlined in New Directions. In proposing measures which will eliminate the rent control system as it currently exists, and in taking away an enforcement tool currently available to tenants to pressure their landlords to do repairs, and in repealing the Rental Housing Protection Act, New Directions is taking away the rights of tenants to affordable and safe housing.

In presenting this as tenant protection legislation, the government is using doublespeak, a term George Orwell coined in his famous novel 1984 to describe a society where hypocrisy and deceptions were the norm of the day. Indeed, as many tenants and tenant supporters from across the province will be telling this committee during the next three weeks, these proposed changes are not tenant protection. The move from rent controls to vacancy decontrol amounts to an income transfer program from tenants to landlords.

We will now proceed to outline what these proposals will mean for tenants if New Directions becomes the law of this province.

Ms Jacquie Buncel: Unfair rent increases: The government's proposal of vacancy decontrol will eliminate the system of rent regulation which has existed in this province for 25 years. The government is proposing that rent controls would be lifted when a unit became vacant and a landlord would negotiate with the incoming tenant a rent without regulatory restriction. Rent controls would then apply again when a unit was re-rented to a new tenant.

These free market rents will spell disaster for the tenants of Ontario. Housing is not a commodity like clothes or hardware where if the customer does not like the price that one store is offering they take their business elsewhere, nor is renting an apartment like a flea market where price negotiation is the expected norm. Housing is

a basic necessity. Landlords and tenants do not have equal bargaining power. Many tenants are from disadvantaged groups like new immigrants, refugees, single mothers and youth. These groups often do not have the experience, and in the case of new immigrants and refugees the language skills, to negotiate with a prospective landlord about the rent.

In addition, this proposal presumes that tenants have somewhere else to go if they cannot afford to pay the rent which the landlord is demanding. In Metro Toronto, this simply is not the case. As mentioned earlier, vacancy rates are extremely low and getting lower.

If vacancy decontrol becomes a reality, tenants who have to move because of a change in their life circumstances will be subjected to high rent increases. Tenants might find they are unable to avail themselves of new job opportunities because they will not be able to afford to move. As well, tenants may have to put up with intolerable and unsafe maintenance conditions because they cannot afford the high rent increases which moving to another apartment will entail. Tenants will become prisoners in their own homes.

Allowing landlords to charge whatever rent they want is simply a handout to landlords. We wish to remind the government that even under the current system of rent control, landlords are now automatically entitled to raise the rent by a prescribed amount every year. In the last five years, most workers have not been given any salary increases; instead wages have been frozen or cut, with many workers losing their income totally as a result of layoffs.

Ultimately, vacancy decontrol will eliminate the controls which have been placed on rent in this province for over 20 years. Approximately 25% of the rental housing stock is vacated each year. Therefore, in four to five years most rental housing in Ontario will be totally unregulated.

As well, with the elimination of the rent registry and the elimination of the concept of maximum rent, the government is making tenants more vulnerable to high and unfair rent increases. The rent registry ensures that rent control applies to the units, not to the tenants. Shifting the focus from the unit to the sitting tenant will in fact reduce tenant protection, as prospective tenants will not be protected. Landlords will charge whatever they can to a tenant applying for a vacant unit, and the unit will not be protected by the now-existing annual guideline increase.

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The government's rationale for lifting rent controls is to encourage landlords and developers to invest in rental housing. It is our position that this legislation will not have that desired effect, due to the economic realities of housing construction in Ontario. In fact, under the current Rent Control Act, new buildings are now exempt from rent control regulations for the first five years. Even with this exemption, the private sector is not building new housing.

Contrary to the position taken by many developers and landlords, rent controls are not the reason why new construction is not taking place in Ontario. It is not profitable for landlords to build rental housing. Govern-

ment has always subsidized the private sector to build affordable rental housing. The Lampert report, commissioned by this government, indicates that a typical new unit costs \$123,700 to build. This requires rents of \$1,100 a month, and obviously this rent would not be affordable to middle- and low-wage earners.

There are a number of measures which could be taken to reduce the costs of operating and building rental housing, such as decreasing property taxes. We recommend that the government investigate other ways of reducing costs to make building affordable rental housing more attractive to developers and landlords.

Metro Tenants Legal Services is also concerned that the government is allowing a maximum of a 4% increase above the guideline for capital expenditures. This is 1% more than what is currently allowed. Allowing higher rent increases will only exacerbate the current severe affordability problems which many tenants in Metro are currently experiencing.

Furthermore, we wish to state our opposition to the government's proposal not to cap extraordinary operating costs. This will allow landlords to automatically pass through to tenants increases in taxes and utility costs. It is our position that there should continue to be caps on these increases. We anticipate that this will prove to be a more significant problem in the future because of the new municipal powers under the Savings and Restructuring Act to charge user fees. For example, municipalities might charge user fees for garbage collection which might be considered as increases in extraordinary operating costs. Tenants should not have to automatically bear the brunt of tax increases without any caps, especially since tenants currently pay three to four times more in property taxes, through their rents, than homeowners.

More evictions and loss of security of tenure: More and more tenants will be evicted, as there will now be a financial incentive for landlords to evict tenants; ie, if landlords get rid of a tenant, they can charge the new tenant whatever rent they want. While the government has proposed to set up an anti-harassment unit to intervene and if necessary prosecute landlords who harass tenants, we do not expect this to be effective at preventing harassment from occurring. Very few resources are presently allocated to the issue of tenant harassment, and there is no reason to expect that this will change. We think it unlikely that sufficient resources will be allocated to make a proposed anti-harassment unit effective in protecting tenants.

Vacancy decontrol will affect tenants' security of tenure, as they will no longer feel that they can stay in their apartments as long as they wish without fear of eviction; ie, as long as they do not breach their responsibilities under the Landlord and Tenant Act. Landlords will pressure and harass tenants to move. Tenants will be increasingly vulnerable to landlords who make their lives difficult in order to evict them.

Mr Toby Young: Continued deterioration of the housing stock due to poor maintenance and disrepair: New Directions proposes to give to municipalities more powers to enforce property standards. For example, there will be stiffer fines for landlords who violate property standards. We do not expect these new powers to be

effective in addressing the serious problems with maintenance in Metro Toronto.

Our experience is that municipalities do not use the enforcement powers that they currently have to make sure buildings are properly maintained. Many do not have the resources to hire enough property inspectors, and others do not take their role of property standards enforcement seriously or do not want to intervene between landlords and tenants. Indeed, some tenants have successfully sued municipalities for failing to inspect properties and issue work orders. With cuts in transfer grants from the province to municipalities, municipalities are unlikely to hire more property standards inspectors to exercise their new enforcement powers.

Our experience with the vital services act has demonstrated that municipalities are unlikely to make use of the additional powers that the government proposes to give them. The vital services act was designed to give municipalities the powers to assist tenants if their hydro or another vital service was cut off because the landlord had not paid the bill. Municipalities were given the power to pay the utilities company themselves and charge the cost to the landlord's tax bill. They have not in any great numbers chosen to pass bylaws to use this power. There is no reason to expect that municipalities will exercise additional enforcement powers for property standards on behalf of tenants.

In addition, the province is proposing to eliminate a part of the system which did help tenants to get their landlords to do repairs, and that is the orders prohibiting rent increases or OPRIs. These orders froze the rent when there were outstanding work orders. This created a financial incentive for landlords to maintain their buildings. By getting rid of OPRIs, the province is abandoning its role in maintenance enforcement. Tenants need the province to be actively involved in ensuring that buildings are properly maintained.

The government has stated that there is no incentive for landlords to repair their buildings. This is quite simply untrue. Built into the annual guideline increase is a 2% increase designated specifically for capital repairs. However, there is no monitoring to ensure that the landlords actually spend this on repairs in their buildings.

MTLS, along with many other organizations, has recommended for many years that the province institute a maintenance reserve fund. Landlords would be required to contribute a certain percentage of their rent income to a centralized fund. This fund would act as an insurance plan which landlords could use if major capital expenditures were needed for their buildings. Such an initiative would ensure that the portion of the rent designated for repairs is actually used for repairs.

Decrease in the supply of affordable housing: The government plans to repeal the Rental Housing Protection Act. This act was passed to prevent the loss of affordable rental housing by giving local governments the authority to approve or prohibit demolitions and conversions of rental housing to other uses such as condominiums. New Directions proposes to eliminate this authority so that developers and landlords will be able to demolish or convert their buildings without obtaining municipal

approval. This will mean a loss of Ontario's supply of affordable rental housing stock.

Legal representation and the access to justice issue: The government is proposing to do away with the two separate systems which currently deal with rent control and landlord and tenant disputes. Instead of issues being resolved at court and through the rent control system, the government wants to bring in a tribunal which would deal with all disputes.

MTLS has major concerns about what the government is proposing. As mentioned earlier, MTLS operates a tenants' duty counsel pilot project at landlord and tenant court through which tenants get access to legal advice and information. In Metro Toronto, there are on any given day 80 registrars' hearings and another 40 cases before the judge presiding in landlord and tenant court. The duty counsel sees approximately 250 tenants per month, which represents only a small fraction of the tenants involved in disputes with their landlords.

If the delivery system is transferred to tribunals, which will be based in various locations, will the government fund a duty counsel project at each of these locations? Already tenants have difficulties getting legal representation at court and at rent control hearings, especially since it is now very difficult for tenants to get a legal aid certificate for a landlord-and-tenant matter and the community legal clinics are underresourced for the demand on their services. We fear that under the proposed system, tenants will have even more difficulties obtaining legal representation.

We hope that the government is not planning to sacrifice fairness for speed in the new system it is proposing. We know that Mr Al Leach has said many times to landlord groups that he will make it easier for landlords to evict tenants. We agree that the present system has its delays, but these have more to do with a lack of resources than anything else.

Finally, the Minister of Municipal Affairs and Housing has said that this government is going to fix the system in a way that is fair and balanced. What is being proposed in New Directions is neither fair nor balanced. He says tenants are going to be protected from unfair rent increases. However, if these proposals are implemented, the exact opposite will occur. Tenants will be vulnerable to high rent increases every time they move. He says that buildings must be properly maintained. The expertise and knowledge that MTLS brings from working on these issues for over 20 years tells us this will not happen. These changes will not improve the standard of maintenance of buildings in this province, nor will this proposal encourage construction of more rental housing.

Instead, the measures this government is proposing will lead to more social dislocation, more homelessness and a deterioration of already adversarial relationships between landlords and tenants. These New Directions away from tenant protection through government regulation and towards a free-market bargaining model are ill-advised. If these proposals become law, tenants will only be free to pay higher rent and they'll be free to face more harassment from landlords. Finally, they will be free to negotiate from a position of disadvantage.

The Chair: Thank you very much for your presentation. You've used up the 20 minutes that was allotted to you —

Mr Green: We started late.

The Chair: — so there's no time for any questions, but we do —

Mr Young: Didn't we start late?

The Chair: We've also let you go a little bit late. We've allowed you the full 20 minutes and we appreciate your presentation this afternoon.

We'll now recess until 6 o'clock.

The committee recessed from 1700 to 1800.

KEN DEMERLING

MICHAEL WALKER

The Chair: Good evening, everyone. Welcome to our committee hearings on the proposed changes to the rent control legislation.

Our first presenters are Ken Demerling and Michael Walker. Good evening, gentlemen. Welcome. You have 20 minutes. Should you allow any time for questions at the end, they would begin with the NDP.

Mr Ken Demerling: I'm presenting as an individual who happened to work for Eddie Cogan, the person who flipped the Cadillac-Fairview buildings twice, and a former Tory and a former riding secretary for the provincial Tory party. Being behind the scenes with Mr Cogan I saw how developers work. At the time I worked for him the Rental Housing Protection Act was in place. They were trying everything to turn all the Cadillac-Fairview buildings into condominiums.

The attitude of why landlords should subsidize tenants is wrong. I've attached a 1979 Toronto Star. Rent controls basically have been a guarantee of built-in profit. The only benefit tenants get is that they know what's going to happen next year. In tracing my own building, which is at 145 St George, it cost \$900,000 to build in 1959. They take in \$900,000 a year now, with \$300,000 in expenses. Where else can you get a return like that? Also remember, in discussing about building and everything else, landlords don't own a portable commodity made with 100% of their money. Municipalities allowed massive impact into communities that have sometimes netted increased crime etc. Governments also gave tax breaks and supplied infrastructure to supply rental stock, not "best land use."

The discussion paper talks about a fine going from \$25,000 to \$50,000. Basically, so what? It might as well go down to \$50. In the existence of the Landlord and Tenant Act less than 30 landlords have been charged. The average has been \$500 or below. Also under the Landlord and Tenant Act the landlord has to post the legal name of the building and the legal address in the lobby of the building. My landlord has a name and address that's 20 years old and it's a style name; it's not a legal name. I've tried to get the Ministry of Housing to charge the landlord. They won't. They won't even send a letter to the landlord.

Also, under the Business Names Act — my landlord does 100% of his business with his tenants in an expired style name — it is not legal to go to court, to enter into

a contract in a style name. Yet the government allows them to go to rent review and the courts allow them to get an eviction notice in a style name.

The government should start protecting tenants, not just using the term as window dressing. No law, statute or regulation was put into place for no reason. For those of you who aren't old enough and aren't from Toronto to remember Trefann Court in the 1960s, that is a crucial turning point in landlord-tenant relationships. None of these laws came into effect "just because"; they were there because of need.

I'm finished with that. I've attached two articles. One is on the effects of New York City's deregulation of rent controls, the other one, from the Economist, a British magazine, on how the New York City government has to massively reinvest in public housing because of deregulation of rent controls. I've also put in Al Leach's brochure to his constituents telling them about rent control and I've put in from the Globe and Mail, "How Tenants are Taxed." If for a half-million-dollar house they pay \$5,872 a year in tax, an apartment in that price range is paying \$23,488.

Mr Michael Walker: Thank you very much, Mr Chair, members of the Legislature and guests.

Back in 1991, when the current rent control legislation was introduced, I was before a committee similar to this arguing with the government of the time. However, at that time I had a very specific complaint: I felt that the legislation didn't go far enough. It didn't include a capital reserve fund or any sort of provisions to ensure that buildings would be well maintained and kept in good repair. Today I am standing up here to say that this government has gone too far, in the wrong direction.

When I first read the government's proposed tenant protection legislation I was shocked to see that all protections for tenants had been effectively removed. Not only were prudent measures like the creation of a capital reserve account missing from this proposed legislation, but the changes proposed represent one of the biggest attacks on tenants' rights in over 20 years, in my opinion. If this proposed tenant protection legislation were ever to be adopted, it would result in less affordable housing, strained relationships between landlords and tenants and less maintenance work being carried out by landlords. It would also result in rental housing becoming a speculative commodity.

According to Minister Leach, when this consultation document was first launched he said that the changes proposed would "give landlords greater incentive to maintain their buildings." How would this be accomplished? The proposed legislation does not suggest any sort of approach where funds are systematically set aside to cover capital repairs. Rather, it suggests that if landlords are able to put the rents up in buildings and charge as much as they can from people who need a home, they will have the incentive to keep their buildings nice. Does this sound like a commonsense approach to you?

To me, the commonsense approach would be to ensure that a portion of each tenant's monthly rent be deposited in a separate bank account, registered to the building and not to the landlord, and this account be used solely for the purpose of making major capital improvements to that

building. This is something I've been advocating for six years.

An article which appeared in the Globe and Mail on July 2 showed that rental housing in Ontario is already one of the most stable investments, delivering a 10% annual return on investment. This would suggest to me that there might already be enough funds available to ensure that the rental stock could be well maintained and that a capital reserve fund could be established. That to me is common sense.

What is most alarming is that if this legislation were to go through and the Rental House Protection Act were eliminated, as this government is proposing, then there is a very real possibility that the number of rental units would actually decrease as it becomes easier for developers to tear down rental apartment buildings. As well, tenants would lose their homes if their buildings were converted to condominiums and they couldn't afford to buy their own units.

I'm deeply concerned about the false expectations that have been created around this legislation. Will this new provincial legislation mean that landlords will keep their buildings in any better condition than they do under the current legislation? It will not. Will this new provincial legislation protect the supply of affordable rental housing? It will not.

There are the same false expectations around the words "tenant protection." Tenants' rights will not be protected by this new legislation. In fact, it will be to the contrary.

Under the cloak of tenant protection, landlords will be allowed to apply for above-guideline increases of 4% for capital repairs as well as unlimited increases for higher property taxes or utility costs. What this means is that if property taxes go up the tenant pays. If we have an unusually hard winter and heating costs go up, the tenant pays.

The only way tenants will be protected is if they do not move. As soon as they choose to move, rent control will be lifted and the landlord can charge whatever rent he would like. Does this sound fair?

Clearly it will be in the interest of landlords to get tenants to move so they can increase the rents that they are charging. How will this be done? By reducing the level of maintenance, subtly, or of service quality that the tenants receive, to the point where they become frustrated and move, or by harassing a tenant into moving.

The government itself has more or less indicated that this is a very real possibility of the proposed legislation and has taken steps to introduce stronger anti-harassment measures and stronger maintenance enforcement provisions. What do these measures really mean in terms of tenant protection?

In introducing stronger maintenance enforcement provisions, the government has eliminated the orders for prohibiting rent increases which have been the single most effective tool for the city of Toronto in gaining timely compliance from landlords for property standards violations. As a result, rents can be increased even when there are outstanding work orders on their building, as proposed in this legislation. Previously rents were frozen until the problems were fixed. Does that sound fair?

While the government is trying to suggest that it is giving tenants additional protection, in reality, in my

opinion, it is weakening the protections that are already in place.

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There are many other changes being proposed under this tenant protection legislation that seem skewed in favour of the landlords and not in favour of the tenants. I don't have time today to list them, but simply put, the government has lost sight of the fact that, in my opinion, housing is a right and not a privilege. Given the tight rental market conditions and the affordability problems that many renters already experience, the consequences of the changes being proposed are frightening.

With the removal of rent controls there is no doubt that there will be upward pressure on rents and more and more households finding themselves with fewer and fewer options. An increase in the overall level of homelessness is a very real possibility of this legislation.

Changes to this legislation were not part of the government's original election promises. I can't find it in the Common Sense Revolution. There is no statement here about it. Furthermore, why is it so important to make such significant changes to something which has worked reasonably well for the last 20 years? Obviously this government is of the opinion that the previous Conservative government, which introduced the original rent control legislation, lacked the vision and common sense to which this present government now feels it has a monopoly.

In my 15 years on council I have never seen such strong and united opposition building up to something the government is proposing. However, why wouldn't this be the case when it is so evident that this government has abandoned the tenants of this province and ignored the fact that they too can vote? It would seem the government has declared war on tenants with this proposed paper.

To conclude, tenants are electors and tenants aren't a special-interest group. Landlords are a special-interest group. Tenants are today's silent majority that politicians take for granted too often. It is time that we, the tenants, fight back. It is time that we say that tenants have rights equal to every other citizen and it is time for this government and all governments to listen to them.

Mr Marchese: Thank you both for your presentations. I want to thank you as a member of city council for the support you've given tenants. They obviously don't like what you've done; they've said that in previous deputations that other city councillors have made. I think you all have a responsibility towards the tenants of the city of Toronto, and spending the money, as you've done, on buttons and other things is a critical thing to have done. I thank you personally on that note.

I also want to point out while you're here that many of you are not NDPers. Some of them suspect that if you oppose this you're NDPers. Is it fair to say, Michael, you're not an NDPer?

Mr Walker: I'm a Conservative with a conscience.

Mr Marchese: Very good. One of the things they have constantly talked about is that there is just not enough for capital repairs, and built into the rent is capital that is there for that purpose. My concern is that it's perhaps not being spent and that's why you're proposing that a capital

reserve fund be set aside to make sure that repairs are done. Is that the argument you're making?

Mr Walker: Yes, it is. That's exactly it. Landlords to date have always thought that all the rent flow is there to pocket and when they want to make improvements they have a right to go back and ask tenants for more, and that's not reasonable. No wise businessperson would ever do that. They would always reinvest part of their cash flow back into their asset.

Mr Marchese: Mr Walker, they obviously argue that you're a misguided Tory, and of course that we're misguided socialists by nature, but they think the marketplace will solve all our problems and that if we allow the marketplace to take care of things, they will build, everybody will be more or less protected, we'll have in place shelter allowances to give to those who can't afford it and everything should be all right. Do you agree with that view?

Mr Walker: No, I don't. I think there is a role for government intervention and I'm proud to have been associated with a government such as Bill Davis's that introduced the first rent control legislation. There is a place for it and there's a long history of government involvement in fettering the freewheeling rights of individuals in a society. Every time government passes legislation it fetters people's individual rights, but in the greater good of society.

Mr Marchese: Thank you for your conscience.

Mr Tilson: Mr Walker, you've appeared before committees that I've been on and I've always admired the way you stick up for tenants and your constituents.

There's quite a political debate that you'll hear as to why we're having housing problems in this province. Some will say it's because there is or there is not rent control, some will say because there's too much bureaucracy, that there is overregulated planning; there's a debate and quite often it becomes very political.

I don't know whether you've had an opportunity to look at the report that came out for the government in November — Greg Lampert. On page 36 he raised the topic which I'd like you to comment on as a municipal politician and what position you'd be prepared to take when this topic surfaces, and it will surface. It says there are higher property taxes for rental housing for ownership housing.

Mr Walker: Yes, there are.

Mr Tilson: The argument has been made that this is therefore a cause of higher rents, the issue is a cause of that, at least according to Mr Lampert. He talks about the mill rates that are applied to determine property taxes. There's enormous variation among the municipalities, but in general it's clear that rental housing is taxed at a much higher rate than ownership housing. The city of Toronto is right at the top of the list, where rental is taxed at 4.2 times ownership. It's been made quite clear by the minister in his opening comments that this topic is being handed off to Mr Crombie and his committee to look at the overall issue of assessment and that sort of thing. I don't know whether this committee is going to discuss it, but I'd like you to comment on it because it will eventually come forward to the government.

Mr Walker: I like the recommendations of the Libby Burnham commission better. She listened to the people,

or her commission did, and made recommendations and they were rejected by this government.

Our proposal —

Mr Tilson: I want to know what you think, Mr Walker.

Mr Walker: I'm going to tell you.

Mr Tilson: I don't want Ms Burnham or anybody else.

Mr Walker: I'm going to tell you. In our proposal, which I am a strong supporter of, there should be one class of residential, and our unit assessment proposal will address that issue and then it will create the introduction into the one assessment system for all residential. We're on record; that was a resolution that I passed and council supported. I support that, but with unit assessment and rent control in place, because I'm not interested in levelling the playing field on taxes if the landlord pockets the tax savings and the tenant doesn't benefit.

Mr Tilson: We happen to be conscientious Conservatives on this side too, Mr Walker, and I will simply say that the issue of high taxes is one that we're concerned with and it's an issue that needs to be addressed. I hope that when the time comes you will speak at your council and debate the issue that clearly people in rental housing are being taxed much higher than ownership housing, and that's not fair.

Mr Curling: The combination that is sitting there, it doesn't take three minutes; it would maybe take half an hour to get some pertinent information. I dealt with Eddie Cogan in 1985 when he wanted to flip and threatened me that he would convert every rental unit into condominiums. I can tell you that he didn't win, as a matter of fact. I told him that Bill 7 would come in. So I want to congratulate you for standing up and coming out openly and supporting the rights of tenants in this respect. As I said, three minutes is not enough.

Mr Walker, I too admire the fact that you were bold enough to come out — I say "bold" to mean putting forward your ideology and saying that tenants' rights must be protected. I want to commend you on this. You and I disagree on certain things but on this issue we're right on.

1820

One of the things you have advocated, very much so, is capital costs for capital repairs. I know it's another way to get landlords to be accountable or responsible for what they should be doing, although it has been taken care of in the amount of rent that people pay for fixing those units. Do you think the provincial government behaved responsibly when they were giving work orders and asking the municipalities to carry out those work orders to the municipalities so they could monitor that? One of the complaints we had was that we asked municipalities to do that without any funds, so that fell through the cracks.

Mr Walker: You mean as proposed here?

Mr Curling: Yes.

Mr Walker: No. I addressed that specifically. When we register work orders against a building — you have the rent registry and you can't get a rent increase if there's a work order on your building — we found that work orders are complied with 60% within one year and over 50% of the remaining within the next few months

because the landlord is fettered in his ability to get even the statutory increase. That's thanks to the last legislation. That is the way to go, because justice delayed is justice denied.

I can assure you we all flex our muscles and say, "We can deal with this issue as is proposed here or deal with noise control issues" or something like that, and the legislation is clear about our rights, but once we lay the charge and they don't comply and then they seek court, then they seek an adjournment — they always get it — I can tell you it's two and three years of hanging on to the culprit who has violated whatever the rule is and going through the courts before you get an issue resolved. Most tenants will have thrown their hands up in despair and fled the scene, because it will not work.

The work order process that I outlined here and which the last legislation was clear on worked decisively. The number of non-complied work orders dropped dramatically, most particularly just before the 12-month period when they were going back to get their statutory increase and/or going for the capital increase of 3%.

The Chair: Thank you, gentlemen. We appreciate your attendance here this evening and your involvement in the process.

EGLINTON RIDING TENANTS' ADVISORY COMMITTEE

The Chair: The next presenters are the Eglinton Riding Tenants' Advisory Committee. They've got a lot of names here: David Moscoe, Vivienne Cutting, Marion Bassett, John Carstone, Sue Henry, Brian Munro, Dawn Pilot and Diane Scoville. Are all those people here? Welcome.

Mr David Moscoe: Good evening, Mr Chair and members of the standing committee. My name is David Moscoe. Seated next to me is Vivienne Cutting. We are members of the Eglinton Riding Tenants' Advisory Committee. This committee was organized through the efforts of Bill Saunderson, MPP for Eglinton riding. We are volunteer members of the tenants' advisory committee and are tenants of long standing, with some members having worked actively with tenant committees over the past 20 years.

The committee was formed in January of this year to gather feedback from tenants in anticipation of the proposed changes to the current rent legislation. The tenants' advisory committee actively sought input from within the riding by asking for written submissions as well as holding two open public hearings. This brief reflects the information and opinions of the tenants of Eglinton riding. Please note that over 50% of Eglinton is comprised of tenants. For ease of reading, this brief has been organized in the same order as the discussion paper.

Vacancy decontrol: Our committee does not support vacancy decontrol because rent controls will be effectively removed from what little affordable housing there is within the area of Eglinton riding. Finding decent, affordable housing in the area is a problem now.

Protection from unfair rent increases — capital expenditure increases: Our committee is supportive of the concept of a capital reserve fund. This fund would be used

to pay for capital expenditures of a building. Each building would have a separate trust fund established and the landlord would be responsible for administration of the fund. Should the building be sold, the trust fund would remain with the building. If the landlord applies for a capital expenditure increase, documentation would have to be produced to detail what moneys were in the fund.

One of the main concerns tenants have in the Eglinton riding is the repair and maintenance of their buildings. There must be some way to guarantee that landlords allocate a portion of the tenants' rents back into the repair of their buildings on a continual basis. The rental guidelines since 1990 have always intended to allow for a certain percentage of the rent increase to be used for major repairs to the building. The 1996 guidelines suggest 2% of the 2.8% be applied to major repairs. This was not monitored and enforced, the result being that buildings were neglected and allowed to fall into disrepair.

The discussion paper suggests that over and above the current rent guidelines there should be a 4% capped increase allowed for capital expenditures. Tenants have already paid once for these capital expenditures through the guideline increases. Why should they have to be held accountable and pay a second time through an additional 4% capital expenditure provision? Our committee does not support an additional capital expenditure provision over and above the rent guideline.

Our committee supports the proposal that extraordinary operating costs over and above what is defined in the yearly guideline increase be passed through to the tenant provided those costs are capped.

In response to the proposal for the simplification of administration:

(1) Our committee does not support the suggestion that "costs no longer borne be calculated for capital expenditures." Once the life expectancy of the cost has been reached, it should be removed from the rent.

(2) Landlords should include operating cost information with subsequent notices of rent increase after an above-guideline increase has been approved.

(3) Written explanation of reasons for a rent control decision should be supplied upon request at no charge.

Our committee does not agree with the rent registry being eliminated. The jurisdiction of the rent registry should come under the municipality.

With regard to the section on maintenance, our committee supports the following:

(1) The province establishes the property standards and the municipality is responsible for enforcing these standards.

(2) The proposed changes listed on page 4 of the discussion paper be enforced by the municipality, not the province.

(3) The province should have the power to enforce property standard bylaws if the municipality is unable to enforce the bylaws.

(4) Our committee felt that increases in fines are only effective if enforced. We are unable to find any case law that shows that fines under the current legislation have been enforced to the maximum.

A strict time limit should be adhered to to improve enforcement of property standards.

The Landlord and Tenant Act: The act should remain under the current judicial system.

Sublets: Our committee has stated at the beginning of this brief that we do not support vacancy decontrol; therefore it follows that we do not support the proposed changes to sublet (or assignment) of the lease.

Abandoned property: The landlord can obtain a writ of possession after 60 days and the landlord has the right to recover storage costs.

Sale of single-family dwellings: Our committee agrees with the proposed changes for the sale of single-family dwellings of 60 days' notice at the end of the lease term.

Privacy: Our committee agrees that the landlord is allowed to enter the unit within specified times, with 24 hours' written notice. The only exceptions when a landlord would not have to give 24-hour written notice are: (1) in emergencies; (2) after notice of termination to show the unit only to prospective tenants with reasonable notice when the tenant agrees to time of entry; and (3) where the landlord agrees to clean the unit.

Harassment: Our committee supports the section on harassment provided that the enforcement unit falls under the provincial court system. Other remedies dealing with harassment on a tenant application should include injunctions, standing orders and restraining orders. Our committee supports the idea of fines being levied provided these fines are enforced.

Dispute resolution system re the Rent Control Act: The tenant should pay the current legal rent until the dispute is settled.

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Application to be completed by either party re a dispute action: This application would go before a mediator who would meet with both parties to clarify the issues, discuss how the law works and discuss options. The application would then move from the mediator to an arbitration panel. An arbitration panel would be independent of the ministry but subject to provincial laws and legislation.

The appointment of the arbitrators would be by public tender, as suggested in the discussion paper, where potential bidders would have to meet specific criteria. A three-member panel would be formed, with one member being a paralegal. The minimum qualifications should include knowledge of the Landlord and Tenant Act and the Rent Control Act. The appointment would be for two years.

The idea of a default judgement would still apply with an arbitration panel. If one of the parties did not appear before the panel, the arbitration proceedings would still proceed and the decision made by the arbitration panel would be binding.

Appeals: The committee supports the suggestion that appeals not go before the courts. We support the single-tiered system which only allows reconsideration for serious error and the power to amend an order based on clerical error or omission or matters of fact and law.

Public access and efficiency: The rent control offices should remain. Mediators and arbitration panels could operate from these locations. We recommend a nominal application fee of \$50 to be paid to offset processing costs.

Security of tenure and conversions: The Ontario government has suggested that changes to the existing rent legislation are required because there is not sufficient affordable housing available now. There is no proof or documentation to support that affordable rental housing is being built where rent control has been removed. By allowing existing rental units to be converted into condominiums or cooperatives, would you not be reducing the rental stock even further? Our committee is not supportive of conversions.

There have been no barriers to building in the past. Condominiums are being built in all sections of the city. The federal and provincial governments have not offered any incentives to build rental accommodation; that is, no GST or PST on building materials for rental accommodation, reduced property taxes on rental buildings etc.

Our committee supports that the Rental Housing Protection Act not be eliminated. Demolitions, major renovations and conversions of rental buildings to condominiums or cooperatives must be subject to municipal approval. Municipalities are attuned to their own neighbourhoods. If a conversion is approved, tenants must be protected. Our committee is concerned that tenants on fixed, low incomes must be given enough time to find affordable alternative accommodation. Our committee supports the following: (1) that tenants be given the right of first refusal and mortgage financing be guaranteed to be in place for those who qualify; (2) that tenants must be given one year's notice and financial compensation equal to one year's equivalent in rent.

Care homes: Care home operators will be entitled to enter a resident's room without notice to provide care or perform bed checks if agreed to by the tenant or his or her guardian.

Transfer to alternative facilities when the level of care needs change should be subject to a doctor's approval.

We agree to fast-tracking eviction cases for residents who pose a threat to other residents, providing a contingency plan is in place.

Other issues for discussion: Interest on the last month's rent should be paid at the end of a calendar year and based on the average GIC interest rate for that year. Payment can be made by cheque issued to the tenant or the equivalent deducted from one month's rent.

In conclusion, we want you to know that our committee realizes the proposed changes to the rent legislation are a highly charged emotional issue. We are talking about people's homes and we encourage those members of the standing committee who aren't tenants to please identify with the plight of tenants.

We wish to thank the standing committee for the opportunity to present our concerns here today. We are confident you will seriously consider our recommendations.

Mr Wettlaufer: Mr Moscoe, Ms Cutting, thank you for appearing. I have some concern about the number of groups that have been coming and stating their emphasis that the landlord should be putting moneys into a capital reserve fund. When you look at the fact that 80% of the units in the province of Ontario are in buildings of four or fewer units; when you look at the fact that these are owned by individuals generally rather than large landowners; when you look at the fact that these individuals

may be immigrants who came here in the 1950s, 1960s with nothing but the clothes on their backs, have worked their tails off to accomplish something in their lives — this building represents their life savings. We talk about pensioners also being owners of these buildings; this is also their life savings. These people need the income from these buildings to support their pension plan.

Then you talk about, why should tenants pay more than once? I just did some rough figures here. Four units costing \$1,000 a month in rent represent \$48,000 a year in income. A 2% guideline increase for capital expenditures represents \$960 a year. If that would have been put away for 40 years by this landlord, he still wouldn't have enough to cover the cost of retrofitting and roof costs, which need to be redone every 20 or 30 years. How much do we expect these poor individual landlords to —

Laughter.

Mr Wettlaufer: Laugh if you will, but we're talking about little landlords; I'm not talking about big land owners.

The Chair: Unfortunately, Mr Wettlaufer, the question has been a little too long. We haven't got time for an answer.

Mr Curling: I think some of my colleagues in the Conservative Party should go and visit some of these places where these poor tenants, and their poor landlords, are. There's no doubt there are good landlords out there, and there are bad landlords. But we're talking about a system that exploits many of the tenants, and we can't fix it in the way that we are presenting things today.

I just want you to comment a little bit, because I think it's an excellent presentation. Everyone is stating — quite a few, not everyone — many people have come in and said rent control is the cause for affordable housing not being built. What do you think motivates that? Is this a political motivation? It is a politically charged issue. They say rent control is one of the causes that affordable housing is not being built. If rent control was taken off, do you see any way at all that this would stimulate the building of affordable housing?

Mr Moscoe: I think it's already been stated to you — I watched the proceedings yesterday afternoon — that rent controls came after a considerable amount of construction in Metropolitan Toronto back in the 1970s. There was a time period when construction stopped; there was no rent control and there was no more building. When I hear that argument that rent control caused the end of the building of affordable housing, I can't buy that. Rent controls didn't stop the building. It stopped for whatever reasons. Maybe taxes were too high; maybe land cost too much. Whatever the reasons were at that time, before rent controls, rental housing wasn't being built.

Mr Marchese: I want to thank you for the presentation and thank all of the members of the advisory groups who have pulled this together. Not every tenant association or building is organized as well as you are, and I hope that people watching can take lessons from that.

I'm beginning more and more to support a capital reserve fund. We already build a capital fund into what landlords are getting. In addition to the 2% they can, if they make a case, argue for 3% more. This government

says, "They can argue for 4% more," an increase of 1% more over the other. Presumably, if they were in bad straits, the landlord would be applying for that money to make the repairs, and they have been doing that. But I don't think they're doing it.

Do you believe, as many of the landlords who have come here believe, that it's rent control that has ruined everyone and everything?

Mr Moscoe: We don't, no, for the reasons that I just stated before.

Mr Marchese: Thank you very much. I just want to say, you'll notice the collusion here and the connection between some of the members on the other side and the arguments the landlords are making. You'll see the clear connection.

The Chair: Thank you very much, folks. We appreciate your interest and your presentation here this evening.

1840

NORTH TORONTO TENANTS' NETWORK

The Chair: The next presenter is Lynn Carleton, president of the North Toronto Tenants' Network. Good evening, folks. Welcome to our committee.

Ms Lynn Carleton: Good evening, everyone. My name is Lynn Carleton. I'm the president of the North Toronto Tenants' Network and I will introduce the people who are here but not sitting up here. We have Janet Humphreys, who is our secretary; Michael Black, who is a director; and Gillian Stewart, who is also a director. These other folks here can introduce themselves.

Ms Lahta Sukumar: I'm Lahta Sukumar. I'm a member.

Mr Herb Heimbecker: I'm Herb Heimbecker, acting treasurer.

Mr Craig McNaught: I'm Craig McNaught, vice-president.

Ms Carleton: We are, among us, a lawyer, a messenger, a secretary, a business executive, a bookkeeper, a writer and an unemployed disabled office worker. This is North Toronto. I'd like to report that we also speak for other tenants' associations that are unable to make their own presentations — and they are all in North Toronto — 65 Broadway, 45 Balliol, 88 Erskine, 225 Davisville, 33 Davisville. All together, there are close to 2,500 rental units. It's not just us four here I'm speaking for.

I'd like to ask a question. Are there any tenants on this committee? There are three tenants. Thank you for answering.

A month and a half ago, we celebrated Canada Day. We sang, we marched, we flew flags, we felt good about ourselves, and we had every right to. The United Nations had announced that Canada is the best place in the world to live. What makes us the best is people. People from sea to sea to sea, from rural to urban, from farmers to truck drivers, from secretaries to doctors, from teachers to couriers, from wheat farmers to Bay Street, the majority of us live ethically and morally, and in doing this we create communities, healthy communities. North Toronto is a healthy community. We live there. We play there. We work there. We get married there. We have parks. We have pubs. We have theatres. We have restaur-

ants. We have kids' playgrounds. There are dogs' playgrounds in the works. We have good shopping. We have schools with excellent academic credentials. We have possible Olympians living in North Toronto. It sounds like a great place to live and it is a great place to live. There are 60,000 tenants in north Toronto.

Let's jump forward to 2001. The Conservative government has been defeated, but not before it removed rent control. North Toronto is not so nice any more. Buildings are being converted to condos. Rents are skyrocketing. Tenants are moving out, leaving half-empty buildings behind them. Local stores and pubs are closing. Theatres have boarded up their windows. Break-ins and car thefts are on the rise; there are fewer police. Homeowners are distressed. Their taxes will probably rise. Schools are possibly closing. Is this an exaggeration? Perhaps, but perhaps not. Do we take the chance?

We recognize that this is only the second day of this committee; it may be the first for some of you. I'm sure you will hear statistics as the week goes by. The North Toronto Tenants' Network recognizes that it's hard to keep focused. To make it easier, we would like to come to you as real people. We have statistics, but what we also have is a lot of distress and anxiety. It's very scary to stand here before you politicians who have control over our lives. We are right now, and will continue for the next several months, living with the threat of possibly losing our homes. A home is what identifies us — our homes, our jobs. We describe ourselves as where we live. We live at Yonge and Eg or we live in the Beaches or we live on the Danforth, and we work at the CBC or wherever it is. This is how people identify themselves, and we are in the danger of losing an identity.

It's very distressing to come before a floating committee. Some of you are here sometimes; some of you are not. Some of you come in and out. I know that you will catch up on what's been heard etc. But I hope there are some people here who are sensitive enough to understand the stress that we will be going through. We did not ask for this legislation to be reviewed, rewritten or repealed. This is a very important time for 3.2 million tenants in Ontario.

We even discussed the benefit of being here. Is it a totally useless, wasteful, frustrating activity to be before you when we also recognize that the majority of the members of this committee are members of the political party that wants to remove rent control? Will we make a difference at all? Is the government going to listen to tenants and our supporters? This government says it wants to represent all people. The ratio of landlords to tenants is one to 22, so whom do you represent?

This government wants to consolidate the Rent Control Act, the Landlord and Tenant Act, the Rental Housing Protection Act, the Residents' Rights Act and the Land Lease Statute Law Amendment Act. First reading, as we know, is scheduled for the fall, and if passed, implementation by spring 1997.

This government also wants to eliminate the orders for prohibiting rent increases and has proposed changes to property standards and maintenance, but it is willing to set up an anti-harassment unit for us. My first question is, why on earth would we need an anti-harassment unit?

Who's going to harass us? Does this government know something I don't? I think so. It already knows what some landlords are capable of, and that's why we're getting the anti-harassment unit. There should never be a need, in the best country in the world to live in, for a unit of this kind. What on earth kind of message is that sending us?

Will someone from the government be with us at night when our lights are shut off? I think not. Will someone from the government be with us when we leave in the morning for work, fearful lest someone may enter our apartment? I don't think so. Will you be there when a landlord or a representative is at our door? I don't think so.

In its discussion paper this government says it wants to protect tenants from unfair rent increases, evictions and harassment. It's very simple, it's very cheap. We want to share this with you: Leave the existing legislation alone.

Having said that, we know that won't happen, so I ask you to please respectfully hear our suggestions and recommendations. If this government's purpose is to get builders building, then we need to talk. If you look at the interest rates right now, they are the lowest they have been for a very long time, 4.65%, and they will start rising in the fourth quarter of this year. If this government is serious about encouraging developers to build, then it needs to do it now.

For example, is it possible to have no taxes for the first two years while a developer is building, and then graduated taxes for the next three years? By the fifth year, taxes could be back to 100% when income is coming in. Consider the lot levies, the GST on units. Choice is what we need.

What this government is proposing is not choice at all, but a removal of choice. Let's not end up like New Jersey or New York. There are no affordable apartments available in New York. According to the *Globe and Mail* last week, the only people leaving rent-controlled apartments in New York are either dead or deranged. There is a booming business in New York selling room dividers for people who are forced to share rents.

1850

Condo conversion: If the Rental Housing Protection Act is repealed, demolitions, major renovations and conversions will never have to require municipal approval. Statistics from the city of Toronto show that many rental units were lost to conversion before this act came into effect.

We recommend that you keep the Rental Housing Protection Act, keep municipal approvals. Conversions, if happening, should only be provided when a majority of tenants approve; the remaining tenants who cannot afford to buy must not be displaced. Landlords can provide lists of appropriate rental units within the same area for these tenants.

Deccontrolled units: We recommend that landlords must post the market rent for units in their buildings in a visible spot where potential renters can see it. There must be a cap on rent increases per year, which can result in easier administration for landlords. There is a very real fear that landlords could create ghettos of exclusion if caps are not in force. Rent could fluctuate, depending on

who is knocking on the door asking to rent. Some landlords may not want single mothers, the disabled; others may not want visible minorities. This must not happen in the best country in the world in which to live.

Anti-harassment unit: Tenants who are under threat will want to move. Some tenants will not understand the court system. Non-English-speaking tenants may not be able to access the court system. We won't need an anti-harassment unit if this government acts ethically. We recommend clarification from this government of what an anti-harassment unit is before there is any action taken towards activating one.

Dispute resolution system: In spite of the fact the government is not clear on this issue, it is important to recognize that tenants keep the right to appeal rent increases to an independent body. We recommend that appointees must have experience and knowledge of landlord and tenant issues and not be politically appointed. The system must be kept available and affordable to every tenant.

The elimination of the provincial rent registry: This government says it wants to simplify administration for landlords. Landlords will no longer be required to report operating cost information or maximum rents. Tenants will no longer have access to information to enable us to monitor the fairness of what the landlord is charging. We will not know if a rent reduction is appropriate due to operating cost decreases. If there is a reduction in property taxes or utility costs, tenants will not know and will not have it passed on to them. We recommend that you leave the rent registry on and available to all tenants. Landlords should not be hiding anything.

Then we come to the removal of rent control. We sit here and say, what is there left to say? Just leave it alone. Keep it on.

In closing, I'd like to say that we have a written submission. It will obviously be written and be sent in later. We'd like to entreat this government to listen to us, to listen to all tenants. Remember that Harris and this government have power right now; in four years, we have the power. There are no hostages in Canada. Let's keep the best place in the world in which to live the best place in the world in which to live.

Mr Sergio: Thank you very much, Ms Carleton. I have enjoyed very much your presentation, really, and I also concur with your final recommendation here to keep rent control the way it is. Even yesterday morning when we had the minister himself here, he said that the removal of rent control alone is not going to spur construction of new affordable housing and so forth. So he agrees that this is not the solution.

If this is not the solution, I think they should go back and bring something that is more acceptable, because what we have heard not only from tenants, organized groups such as yourself, but also developers is that this is not acceptable to anyone except the Conservative Party, the government itself. He also said he hopes to have some good recommendations from this committee once the hearings are over, and you're quite right — let's hope this is not a futile exercise.

I support your views which you have expressed and I sincerely hope that the members of this committee here

will recommend exactly that because from what we have heard and from what it is perceived we will hear in the next couple of weeks, it's going to be much of the same. I just make that comment. I don't have any questions that I would like to ask.

Mr Curling: What's the ribbon about?

Ms Carleton: This ribbon?

The Chair: Excuse me, it's Mr Marchese's time.

Ms Carleton: Okay.

Mr Marchese: I just want to thank the network for its presentation and tell you quickly some things. First of all, the minister said that he has listened to tenants and the tenants have been telling him they want reform. I'm not sure this is the kind of reform you were looking for and I'm not sure he's been talking to tenants, because if he were, he would have been listening to your message.

Mr Curling: He would be here.

Ms Carleton: He would be here.

Mr Marchese: To be fair —

Mr Curling: That's fair. He'd be here.

Mr Marchese: Most ministers don't come here.

The second point is, is it futile to come? It's never futile to come.

Ms Carleton: That's why we're here.

Mr Marchese: Your voices will be heard. We're televised. The members hear you, other people hear you and the voice spreads. You come as real people who are worried about the threat to their homes, and that's a very good concern.

You mention another point about if the government is concerned about creating homes or housing, then let's talk about that. The problem is, the landlords and the developers and many Conservative members see the abolition of rent controls as a prerequisite, and that's the tough thing. I wish they could put that aside because I too, like you, would have been able to then look at how we build and you might have gotten more cooperation from us if we talked about how we do that. But when they build in the abolition of rent controls, because that's what it's all about, then they've messed it up. They've messed it up in ways that they have threatened all of the tenants. So I hope you keep up that struggle, as all of you are doing, and I'm sure that they're listening.

Mrs Ross: I want to address a couple of things. First of all, you are aware that this is a discussion paper. There is no legislation in place now and the whole purpose of these hearings is to hear exactly what people are telling us so we can go back and discuss the issue and come up with the best piece of legislation we can. Unlike what some of the opposition members have stated, I am not in collusion with any builder or developer — never have been, never will be. I intend to listen to what I've heard.

I want to just talk to you about a couple of things. One thing you said was, "Let's not end up like New Jersey or New York." Are you aware that in New York City they have rent control, and have had rent control since 1943?

Ms Carleton: Yes.

Mrs Ross: Isn't that frightening, to think that with rent control there is —

Interjection.

Ms Carleton: There's an addendum to that.

The Chair: Mr Curling, Mrs Ross has the floor.

Mrs Ross: I'm doing a lot of reading and research on this because I want to understand the issue as best I can. In looking at BC, for example, where they've eliminated their rent control, you can get a two-bedroom apartment for \$784 in Vancouver, where it costs you \$812 in Toronto. Average rent increases were about the same: 1.6% in 1994, and all of this is without a guideline or any cap on rent increases. So can you explain to me why you think rents would skyrocket with the removal of rent controls when in fact with rent controls you see what's happening?

Ms Carleton: I think in BC —

Mr Sergio: This is Toronto.

Ms Carleton: Yes, we're dealing with Toronto.

Mrs Ross: Let's talk about the New York situation then.

Ms Carleton: The New York situation, if you read the Globe and Mail article last week, you would see there's more to it than saying there's rent control there. There's a whole other part of that. I actually have the article here.

Mrs Ross: Oh, I have it.

Ms Carleton: You know that saying "because it's on rent control" is picking one very small part of that, because they explained what happened with the condos in there. But again, we're not living in New York and we don't want to.

The Chair: Okay. Thank you very much. That exhausts our 20 minutes. We appreciate your attendance here this evening.

Ms Carleton: Do you want to know what this ribbon is for? Yellow is the colour of hostages, and we do not want to be hostages to the Harris government.

1900

HIGH PARK TENANTS' ASSOCIATION BRETTON PLACE TENANTS' ASSOCIATION

The Chair: The next presenters are from the High Park Tenants' Association, represented by Janet Lisboa and Betty Postill. Good evening and welcome to our committee.

Ms Janet Lisboa: Thank you, sir. The High Park Tenants' Association and Bretton Place Tenants' Association would like to thank the Ministry of Municipal Affairs and Housing for giving us this opportunity to make a presentation on the tenant protection proposal entitled New Directions. We represent almost 3,300 suites and we have been in existence for over a decade.

Our associations have studied this discussion paper from cover to cover. We find that while it seems innocuous at first reading, the contents could prove disastrous for a large majority of tenants.

Our association submitted many of the changes that were made by the last government. These changes were good and they are working.

Unlike the minister, we have not found any tenant organizations that seem to be enthusiastic about this discussion paper. Naming it a tenant protection package is so ludicrous that we wonder whether the belief is that tenants and stupidity go hand in hand. We do agree with the minister on one issue: that there is always room for improvement.

Goals for a new tenant protection system: The current legislation protects tenants from unfair or double-digit rent increases and therefore provides security of tenure. In a democratic country such as ours that guarantees freedom of movement, the proposed legislation would in a very subtle way restrict this freedom. For example, a tenant finds a job which necessitates a lot of travelling time. The tenant decides to move closer to the new workplace to be able to spend quality time with the family. However, any prospective dwelling that is viewed from out to be out of reach because it is decontrolled.

Next, this paper talks about passing through increases for maintenance and other repairs with a view to creating jobs. Many tenants, particularly in high-rise buildings, have been subjected to finance costs to enable landlords to own their new acquisitions. In many cases the landlords had overextended themselves.

Under the legislation in the late 1980s, tenants paid 5% extra each year towards finance costs, besides other increases for a variety of reasons, over and above the guideline increase, including a percentage to guarantee a profit margin. These amounts have been compounded over the years because once they were passed through they were incorporated in the rent. These tenants are bearing that burden even today when many buildings have changed ownership.

In addition, tenants have been subjected to above-guideline increases because of repairs. This discussion paper says that such repairs will create jobs. Tenants, particularly in high-rise buildings, have been and are still paying taxes at higher rates than even the Eaton Centre and Toronto-Dominion buildings, to name only two. Now we have to bear the burden of creating jobs as well. This is a mandate of the government, namely to boost the economy, employment etc but not on the backs of tenants.

One common business practice used to be to invest money to make money. Is it now the norm to rob Peter to pay Paul? Is it asking too much to expect landlords to reinvest some of their profits to increase their own equity?

Nowhere in this paper does it state how long tenants would continue to pay the higher-than-guideline increases. Only reductions have a time frame. Can this be called tenant protection? The present cap is 3%, but this paper wants to change it to 4%. We cannot understand why, when inflation is at its lowest rate in years. The only argument in favour of this appears to be that just the interests of the landlords have been taken into account when planning changes.

What is even more frightening is the fact that "Rent increases related to extraordinary operating costs will not be capped (ie taxes and utilities). Landlords have little or no control over these costs and the resulting rent increases tend to be very low." Our question is, what does this government assume to be "very low," and what happens if increases are not very low? We, the taxpayers, have been victims of successive governments increasing taxes time and time again in one form or another. How much of a tax burden does this government expect tenants to carry?

Illegal rent increases and illegal charges, How can these be proven, particularly in view of the fact that the

rent registry will now be scrapped? Rent abatement is made to sound so easy and remedial. We would like to point out that it is not always easy to prove situations of harassment, hence rate abatement in many cases would be on paper only.

Appeal procedures: Whom will appeals be directed to, and how will the increase percentage be decided on, particularly in cases where a building or buildings may consist of controlled and decontrolled units? How can these be verified if there's no rent registry? We consider rent registry to be of the utmost importance, especially for rent-controlled units.

Simplification of administration, as set out at the top of page 3, makes tenants vulnerable to higher capital cost increases, restricted freedom of information and no mandatory explanation for rent control decisions made. Sounds dictatorial? It is.

Tenants in most if not all buildings have free visitor parking facilities. Consider the example of Laurie on page 2, who decides that this is no longer going to be made available to tenants. Tenants request a rent rebate. Laurie argues that no rebate is allowable as the landlord never received any money for this service, the money having gone to a municipal law enforcement company. How would such a dispute be resolved?

Moving on to the example of Yori on page 3, we agree that this would not be allowed under the current legislation, and for very good reasons:

(1) It does not specify how long the rent increase would be in effect for this renovation.

(2) If John agrees to the renovation, it would not be out of the goodness of his heart but because it would raise the equity of his property.

(3) Such legislation does not provide any incentive for a tenant to ameliorate his or her abode.

Page 4 contains a whole list of inspectors making enforcements. Nowhere does it mention who will foot the bill, the landlord or the tenant, particularly if the investigation did not uncover any violation. The paragraph at the bottom of this page states that a municipality's ability to recover costs will be improved by treating them as municipal taxes. Tenants pay the taxes, hence it is the tenants who will be punished for the sins of landlords.

In addressing the so-called tenant protection package with reference to the Landlord and Tenant Act, we find, on examining the proposed changes in detail, serious flaws beneath the surface. Dealing in a positive way with the inequities pointed out by our associations would be a good beginning. It still requires a lot more study and needs to be brought back to the discussion table if this government is really serious about tenant protection, as it claims to be.

With reference to the second statement under "Sublets" on page 6, regarding reasonable cause, it does not deal with the situation where it might not be a sublet but rather a caretaker friend.

All the situations referred to under "Harassment" are meaningless, as most people who are realistic know that it is not easy to prove harassment. It is easy to make grandiose statements of fines and rent reductions but they are virtually useless unless and until harassment is proven. The dispute resolution panel should be made up

of three well-informed landlords and three well-informed tenants.

Let us consider the example of Celine on page 8. This is easier said than one. In many high-rise buildings it is extremely difficult to distinguish where the disturbance is emanating from. How can one accuse someone and seek eviction if one does not even know who is responsible for the disturbance? On the other hand, sometimes the culprit could be a faulty elevator or pump or even a garbage chute that is the cause of sleepless nights for those tenants whose bedroom walls are in close proximity to those areas. Are those same tenants expected to put up inspectors or other personnel in their bedrooms to verify the authenticity of their complaints?

1910

Once again everything as laid out in this discussion paper appears to be very simple. However, many situations are far more complex and cannot be resolved so easily.

Under "internal appeal" on page 9, no mention has been made of who will bear the cost of the appeals. The repercussions are too serious for either side to allow a single-tier system, and furthermore, to leave such decisions with far-reaching consequences in the hands of one person only. Under "Public Access and Efficiency" this paper quotes that there are 50 local courts, General Division. Elsewhere in this paper mention is made about eliminating court procedures, which makes it a contradictory statement. In addition, mention is made of user fees and cost-effectiveness. It would appear that the government intends to generate additional revenues. In such cases it is almost always the tenants who suffer.

Both our associations feel very strongly about landlords setting up and maintaining a reserve fund as a safety net. There have been cases of landlords who have received rents but not made payments for mortgages, utilities etc. When they get caught with hazardous dwellings and are plagued by collection agencies they just walk away. The reserve fund will prevent such happenings as long as proper safety requirements are put in place. The study says that \$10 billion worth of repairs is required to the existing rental stock. This is one of the reasons to justify setting up a reserve fund.

Conversions: Even when a majority of tenants is in favour of conversions, we would strongly recommend that tenants desiring to continue as tenants must be protected in every way possible. We would be very responsive to participating in any discussions on conversions. The topic is too far-reaching and extensive for us to do justice to it in this submission.

At the moment, tenants can either be on an annual lease or on a month-to-month lease without losing benefits either way. This issue has not been touched in New Directions.

In conclusion, we would like to make a strong recommendation that landlords receive adequate training. We have read New Directions in its entirety and we cannot find anywhere a mention that landlords will be trained as such. There are landlords' organizations that are capable of offering informative and efficient workshops and presentations.

Some years ago I was fortunate enough to be asked to address a group of small landlords. I listened and I heard.

There were all kinds of horror stories. Tenants are not the only ones who complain. What came across very clearly was that many of the landlords I heard speaking felt that all they needed was property and/or money to qualify as landlords. They failed to see that if they had invested a little time to study their responsibilities as landlords and interpret the legislation accurately, they would have saved themselves, in many cases, grief and money.

Our suggestion is therefore that this panel make a strong recommendation to encourage landlords' organizations to hold training seminars for present and potential landlords. The sources for the recommendations in this paper appear to be the personnel from the Ministry of Municipal Affairs and Housing and the Fair Rental Policy Organization of Ontario. At one time FRPO did have tenant representation. It is our understanding that they no longer do. Our associations feel very strongly that tenants' associations should have had direct input.

Thank you for listening and hearing.

On a personal note, I would like to say that the name of this proposal should be more aptly called the Tenant Persecution Proposal. It's not a protection proposal, and anyone who tells me that I am wrong, obviously I don't understand the language, but I think I do, in some cases better than most.

Mr Marchese: Thank you for your strong presentation. Quite clearly tenants know exactly what they're talking about or they wouldn't be here. In fact, you are all very representative of the anxieties and fears that many are expressing, where they're able to come here and where they're not, because many could not make it here because of time limitations. We know that many of you understand clearly the implications of what this means to your home, because that's what we're talking about: the implications it has to your homes. All of your efforts will be heard, and I think you should keep that up as you do your work.

Ms Lisboa: Oh, we will, Mr Marchese.

Mr Marchese: I have no doubt about that.

You make a good point about education for landlords. In fact, some of them have suggested that tenants need education, and I suspect in some cases that's true. But no one has yet mentioned that landlords could use some of that education, because I think quite clearly some of them believe that all you need to be is an owner of property to be a landlord. There are responsibilities, and I think that's a very good point.

I support very strongly your point about a reserve capital fund. I have more and more become convinced that we need it, because I am not convinced that the money that is permitted now under our current legislation that should be used for that is being used for that purpose. They now say we need \$10 billion worth of repairs, forgetting that \$1.7 billion is being collected yearly for that purpose. The question is, where is it going?

Mr Boushy: Just a couple of quick questions. You represent 3,300 suites?

Ms Lisboa: The two of us. Betty Postill is the president of the Bretton Place Tenants' Association and I am of the High Park Tenants' Association.

Mr Boushy: I just want to ask you a general question. You said on page 2 that the current legislation is okay; you feel comfortable with it. Can you, in all conscience,

say on behalf of the people you represent that you are satisfied with the status quo?

Ms Lisboa: Mr Boushy, let me assure you of one thing. I have not written a thing here that I don't believe in and that doesn't work, because I talk to tenants. I talk to far more tenants than you probably have talked to, even though you are an elected member.

Mr Boushy: My question is, are you satisfied with the status quo?

Ms Lisboa: Yes, I am.

Mr Boushy: And the majority of the people you represent are?

Ms Lisboa: There is always room for improvement. You want me to suggest some more room for improvement, I'll do it.

Mr Boushy: What is the most important thing that you want to change in the present legislation?

Ms Lisboa: That I want to change?

Mr Smith: In the present legislation.

Ms Lisboa: Well, I don't think I see anything. I can see adding to the present legislation.

Mr Boushy: What's the most important thing you'd like to add?

Ms Lisboa: That we deserve to have a roof over our heads, Mr Boushy.

Mr Curling: Thank you very much. I think, again, it's a very excellent presentation. It reflects, very much so, the input of many tenants, and your research, it seems to me, touched the heart and the soul of people. These kinds of presentations are the things we want to hear.

The problem we have, though, is that when we translate that into legislation, we lose all that flavour and we get a one-sided view of things. That's the problem with legislation. We hope the committee listens and the government listens. We hope the ministry is not hurriedly making legislation before the hearings are over.

As you know, there is one part on page 4 of your presentation, the present cap, where you are talking about the capital cost is 3% and they want to change it to 4%. As you know, even with a 2.8% increase, that guideline that has been administered, with this law which they would put in place, the increase in rents would be 7% and not 4%. Rents will go up, while I see in a brochure that Mr Harris stated that rents will go down. Do you see any way that rents will be reduced under this change which they say tenants want to this legislation?

Ms Lisboa: It's just like everything else in this paper. On the one hand you say, oh, the tenants will pay the taxes, but they will be low. Another thing is, the landlords will be fined, but it will be through taxes. Who pays the taxes? It's the tenants, not the landlords. So who foots the bill for the landlords? It's the tenants, through the taxes.

The Chair: Thank you, folks. We appreciate your interest in our process and your coming to make a presentation to us. Have a good evening.

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SOCIETY FOR CONFLICT RESOLUTION IN ONTARIO

The Chair: The next presenter is from the Society for Conflict Resolution in Ontario, David Evans from the

board of directors. Good evening, sir, and welcome to our committee.

Mr David Evans: Good evening, committee members. My name is David Evans. I am representing the Society for Conflict Resolution in Ontario, and we pronounce our acronym "escrow," which may be unfortunate given the topic tonight.

SCRO would like to thank the committee for providing it the opportunity to make this presentation. SCRO is an organization of professionals who are dedicated to promoting responsible and professional dispute resolution practices in Ontario. SCRO encourages effective, efficient and creative dispute resolution approaches and processes.

On a more personal note, I have been in the business of resolving conflicts since 1980. I am a tenant and I'm also on the board of directors of SCRO.

SCRO wishes to comment solely on the conflict resolution part of the proposed legislation.

In the brochure *Rent Control Changes...and You*, which arrived in my mail a few weeks back and which echoes the Ministry of Municipal Affairs consultation paper, it is written that: "Under the current system, where a landlord and tenant have a dispute over maintenance or payment of rent, they have no choice but to go to court. The new tenant protection package proposes a less formal, faster problem-solving approach of dispute resolution that will make it easier to resolve landlord and tenant problems."

Collapsing the conflict resolution process solely into an adjudicated process does not — and I can tell you this from experience — necessarily reduce emotional, time or financial costs. And adjudication certainly does not get the province out of the financially and politically expensive business of resolving disputes. As well, adjudicated resolutions, like court decisions, usually result in a win-lose situation, sometimes creating new conflicts in an attempt to resolve others.

Depending on the process, decisions made by adjudication boards can be, and often are, appealed either to the courts for judicial review and/or to cabinet for a review of the decision. This results in even more time and costs and increasing, rather than decreasing, the number of steps required for resolution.

Other types of dispute resolution, like mediation, allow those party to a dispute to negotiate a mutually acceptable resolution. These alternative dispute resolution approaches are increasingly popular. They often work better than adjudication simply because people control and craft the resolution to a conflict. However, while alternative dispute resolution approaches often cost less, take less time to complete and result in win-win solutions, processes whereby parties negotiate a resolution are not helpful when resolution is not possible.

So what may work? There has been a lot of good experience, and in this province as well, with a two-stage process called the mediation-arbitration — or in slang, med-arb — model. Med-arb allows people to work together first to try and resolve their dispute, allowing, if a resolution can't be reached, for a third-party neutral to then hold a hearing and make an enforceable decision. In the context of the new landlord-tenant legislation, SCRO suggests a mediation-arbitration model with the following elements:

(1) The new legislation should require that landlords and tenants — tenants either as individuals or as duly constituted associations — attempt mediation or some other form of consensual negotiation before either can request an adjudication resolution. This step can be easily initiated with a letter from one party to the other requesting an opportunity to discuss the matter in dispute.

(2) Mediation should be a private matter, paid for by the parties if there is a cost, and at no cost to the province. It would be helpful if the adjudication board has members who are also competent mediators, but people should be allowed to hire anyone they decide to assist them. If a board member is asked to assist, the parties should pay for that service at the going rate. The board should not be able to appoint a mediator or have the inclination to appoint a mediator. There's a very fundamental principle of consensual negotiation that revolves around that comment.

(3) The board should only hear those issues that the parties to the dispute can't resolve themselves. A landlord and/or tenant would have to demonstrate to the board that good-faith negotiations have been attempted. The board should establish a set of negotiation and mediation requirements which it would use to evaluate a request for adjudication.

(4) The legislation should allow either landlords or tenants to apply to have negotiated settlements confirmed as legal agreements so the agreements are enforceable. It is critical that agreements can become legal documents so that negotiations are conducted in good faith and so that, most importantly, implementation will occur. It also would be helpful if the board had enforceable powers, including the ability to award costs. I can tell you from experience that the boards that don't have the ability to award costs are much less effective in these ADR processes than boards that do have the ability to award costs.

The ministry's discussion paper asks a number of questions about what an adjudication board might look like and how it may function. I would suggest that if a new landlord-tenant board is to be created, it should be consistent in design and function with whatever reforms are being contemplated for those boards and agencies presently under review by the government. The last thing we need is another or different type of board; it should all be consistent. Above all, users must be provided with a process that is, as the minister says, a "less formal, faster problem-solving approach" and a real and better alternative to using the courts.

I hope these comments have been of help to you. Thank you again for providing SCRO the opportunity to present this brief. I would be pleased to answer any questions you might have.

Mr Maves: Thank you very much, Mr Evans. We can use your type of expertise quite often around here. We'd like to see more of you.

You said in here that there are lots of examples across the province where this med-arb model has worked before. Could you just highlight a few of those?

Mr Evans: I can suggest to you that in my own experience — I'm a hearing officer with the province — our board uses all kinds of approaches before hearings to allow the parties an opportunity to try and come to terms

with whatever the issue is. Sometimes they're self-negotiation processes, where we simply say to people, "Go and try to resolve this conflict between you," and we have a set of guidelines. If you can resolve it and you do it within the guidelines, we will respect it and we will automatically agree with it and enforce it as long as it's within the law and meets the guidelines. If you can't resolve it, then we'll take it, as an adjudication board, and hear it.

I sit on the Environmental Assessment Board, and in cases where municipalities want to fund the participation of community groups, very often we'll say: "Please, go away and try to work it out. If you can settle it, we'll confirm it. If you can't, call me in and I'll assist you to work together, and if you can't, we'll make a decision." I can tell you that every time I have used it, both in my practice as well as a provincial hearing officer, the parties have resolved the dispute to their satisfaction.

Mr Maves: With the number of disputes that we have, have you given any thought about how many boards you'd have to have, how many qualified folks have to be on these boards?

Mr Evans: No. Whatever it is, it would be less. I'll tell you that one of the frustrations I have as a tenant is that I have no easy access to my landlord. One of the things we're setting forward is a model that says I have to have access to my landlord and my landlord has to have access to me if we decide we need to settle a dispute. So I would suggest to you that many of the frustrations I have as an individual tenant might be resolved, and you might find in the long term that if you force the parties to sit down and in good faith try to work it out — which is not the process now; the process is appeal — you might find you need less of a structure, not more of a structure.

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Mr Maves: One of the obvious problems I guess people would point to is that if it's financed by the participants, you're going to hear arguments that low-income tenants aren't going to be able to afford this.

Mr Evans: I was very clear in the presentation, and it's in brackets, "if there is a cost." I can tell you again that the med-arb model — and this is one of the difficulties with using terminology: mediation, by definition, requires a third-party neutral to come in. What I would like to suggest is that any way in which people can come together and try and work these things out is okay, and my hope is that a good number of them — just the legislation allowing me, forcing me as a landlord to talk to my tenant and me as a tenant allowing access to my landlord. I don't need somebody intervening; I'm smart enough. But sometimes when it's an issue that may incorporate, let's say, 300 or 400 units, an association may want as a corporate body to say, "Let's get someone in because this is a very big issue and we have the ability to fund it."

Mr Curling: Thank you, Mr Evans, for a very good presentation. Could you comment on some of the stripping of the legislation that this government has taken away now? Some of the government members are saying that the status quo is not working, so they're going to strip much of this legislation. We have tenants who have

come in and said, "This legislation has been very helpful." By taking it away, when we have conflict resolution and have put this harassment unit in, wouldn't it then put forward that there would be more things they would have to bring before this harassment board because most of the protection they had in this legislation will be gone?

Mr Evans: There are two issues there. I repeat that as a tenant one of my major frustrations is that there is no motivation in the law for landlords and tenants to have to sit down before you get into these things like harassment bodies or adjudication boards. There might be less of a need if people — and this is the other end of it. One of the real problems is that I think most tenants and, as we just heard from the previous presenters, most landlords don't have enough knowledge of the law and the process and a lot of stuff just simply dissipates because people don't know.

If a proper negotiation-arbitration kind of model were put in along with an educational process to let landlords and tenants know what is out there, you might find it works a lot better. You see, one of the things about living in someone else's building is that person basically would like me to pay the rent and I don't see them unless I cause a problem, and this model changes that.

Mr Curling: People have to have confidence in the system even to be comfortable and to operate within it. Take, for instance, the example of the Human Rights Commission. They have no confidence in it. Why would you feel that people would have confidence in a new system after so much change had been done to the legislation? Do you think they would have confidence in this system? How long do you think it would take before some people would have some confidence in this?

Mr Evans: I can't speculate into the future. I can tell you, again from experience, and I think you can say the same thing, sir, that any process that allows me control of it is much more satisfactory than putting me in a situation where I have no control and it's all up in the air. I suggest to you that a well-designed dispute resolution model could be very satisfactory, because the people in dispute have control. They can decide to resolve it or they can decide not to resolve it. Right now, the dispute's there and you send it to court.

Mr Curling: A simple thing like the rent registry has been taken away when tenants felt that the rent registry was a very important thing for them in order to know what's happening. Would you feel that should be retained, that the rent registry be there for people to feel comfortable about who they're dealing with and what the company name is?

Mr Evans: It's a bit outside of what I'm here to talk about, but if it turns out through some evaluation process that it is a useful thing, I would say keep it of course.

Mr Marchese: Mr Evans, we've found a great deal of unanimity so far with tenants around many issues. This is one around which I don't think we have close to unanimity in terms of how they're going to deal with this. Overall, I think the courts are very intimidating to anybody, generally speaking, and most people don't have a clue how to get there, even if somebody told them they should. Tribunals I suspect are equally intimidating because they have the same aura as a court, so they're all

intimidating. But by and large, most tenants don't know how to get there and nobody will tell them or explain to them how to go about doing it. So we're going to have that particular problem in terms of how we deal with that.

What you propose doesn't seem to me unreasonable as some interesting steps that should take place. I suppose where we're going to have problems is in the appointment of the board where they would enforce unresolved problems, where they will have the ability to award costs. The question would be, who gets appointed and how and how fair or neutral are those folks going to be? I suspect that's going to be in part one of the complications around this. Do you agree?

Mr Evans: Absolutely, and I think it's a huge problem that this government is I presume tackling with the review of all boards and agencies as to the proper composition of all boards. So I don't think this would be any different; absolutely not.

Mr Marchese: And so far of course the Tories, as you know, are very non-partisan, even though they only appoint Conservatives, so that complicates this thing a little bit. Your suggestion about forcing landlords and tenants to sit down and talk as a first step I think is a useful thing to happen, but I'm not sure that some of those issues can be resolved.

Mr Evans: I want to be clear. We're saying that adjudication has a role and negotiation has a role. We would prefer negotiation at the front end because the people who are party to the dispute control negotiation, and that's very powerful and very important — but the legislation should back them up on that, and there are a number of points on that. When you can't get a successful resolution, the backup is the arbitration end where someone who is neutral to the dispute can come in and say, "Okay, I'll resolve it for you."

The Chair: Thank you, sir. We appreciate your attendance here today and your interest in what we're trying to accomplish.

CROWN COMMERCIAL PROPERTIES

The Chair: Our next presenter represents Crown Commercial Properties, Thomas Putman. Good evening, sir. Welcome to the committee.

Mr Thomas Putman: Good evening. My name is Thomas Putman, and I would like to thank you for the privilege of speaking to you this evening. In terms of my background, I have been a rent control consultant and residential property manager for 16 years. While there are many issues of concern regarding landlord and tenants matters, I would like to speak to you with respect to three: maintenance enforcement, capital expenditure and dispute resolution.

With respect to maintenance enforcement, the current maintenance enforcement system is flawed because it does not distinguish with respect to the severity of a problem. The most trivial problem is dealt with in exactly the same manner as the most serious.

The root of the problem is that most municipal property standard bylaws are written in absolutes. There are no tests of severity. If a property owner has some peeling paint, he violates the bylaw. This is without regard to

whether the peeling paint is a trivial blemish in the top corner of a room or if half a wall is destroyed.

The problem of writing effective legislation is made difficult because of the nature of real estate. A building deteriorates over time due to the wear and tear of usage and exposure to weather. The simple reality is that all buildings in Ontario have some bylaw deficiencies, including the building I'm in right now. The distinction between a good owner and a bad owner is not the absence of problems but the speed at which those problems are remedied. The good owner has an effective, ongoing maintenance program and promptly completes each repair. The bad owner either doesn't do the repair or takes forever to get the job done.

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Some of the proposed changes will make the problem worse. There is still no test of severity in the proposed changes, and now all deficiencies will be made offences. We need to retain the two-step bylaw process, step one where the property owner is advised of a problem and given an opportunity to correct the problem without a penalty, and a second step of enforcement for non-compliance.

Further, we cannot make simple violations an offence. If you do, then by definition you have made all property owners in Ontario guilty of offences. The simple reality is that all buildings have some deficiencies. Deficiencies are a permanent reality, and only in the government would you consider making reality an offence.

With respect to capital expenditures, the current system of rent increases due to capital expenditures does not provide for a recovery of capital or an adequate return on moneys invested. As long as the ownership of multi-residential property in Ontario is voluntary, then the Legislature must recognize that the owners must compete to raise capital with the investment alternatives, such as the stock market or interest-paying bonds.

The proposed capital expenditure limit of 4% is a step in the right direction, but it is not large enough to provide enough capital funding for large projects such as underground garage renovation. The unfortunate reality is that the size of the capital projects gets larger as the buildings get older. With Ontario's aging rental stock, a cap limit of perhaps 10% is more appropriate.

We always need to remember that the issue of building standards and maintenance and the issue of rent increases for capital expenditures is the same issue simply viewed through different perspectives. If the government and the tenants want adequate property standards, then they must recognize the need for adequate funding and thus a reasonable capital expenditure rent increase system is necessary.

If I could take a moment to talk also about the concept of capital reserve funds, the system is very complex and it is very unfair, both to landlords and to tenants. The tenants in the newest buildings, which typically have the highest rents, would end up paying the most into the reserve funds, but those buildings have the least amount of need. The oldest buildings, which have the greatest need, would end up making the lowest amount of contributions, and there simply wouldn't be enough funds to provide for adequate capital expenditures. The old adage

should apply that the tenants who receive the benefit of those capital improvements should be the ones who pay and those who do not receive any benefit should not have to pay.

With respect to the dispute resolution system, at present there are three government bodies which deal with some aspect of landlord-tenant disputes: the provincial courts, the rent control programs in the Ministry of Housing and the bylaw enforcement departments of the local municipalities.

The provincial court system is very efficient and very effective. It deals with an incredible caseload. In Metro Toronto it deals with some 30 to 40 cases every day, and with a minimum of manpower. There is one judge who listens to those 30 or 40 cases every day of each week.

In contrast, the rent control programs of the Ministry of Housing are the least efficient, the most expensive and the slowest. The rent control programs are also the most arbitrary process and the process least bound by either legal precedent or due process of law. To give an example, the tenants of a 16-unit building in Metro Toronto made an application to rent control programs for a reduction in rent due to inadequate maintenance. The process started in May 1995 and it continues at present, some 16 months later. We have had 27 days of hearing. The cost to the landlord for lawyers, accountants, consultants and engineers is approaching \$40,000, or in excess of one year's maintenance budget. The cost to the ministry must exceed \$150,000.

In one of the orders we've received to date, a tenant was awarded a lump sum of \$35. In other words, a dispute between a landlord and a tenant, where the economic value of the dispute was less than \$100, has cost the ministry and the landlord probably \$200,000. This is lunacy. The system is out of control.

We must maintain the role of a court-type system in resolving landlord and tenant disputes. For a reason that I do not properly understand, judges are significantly more effective and efficient in resolving disputes than the bureaucratic model. The bureaucrats are simply not very efficient. They do not have the ability to distinguish between the serious and the trivial. I do not see the value in adding 300 or 400 people to the size of the rent control programs in order to deal with the workload of one good judge. Thank you very much.

The Chair: Thank you, sir. We've left about three minutes each per caucus for questions, beginning with Mr Sergio.

Mr Sergio: Mr Putman, I have enjoyed your presentation very much. Two areas that you mention: One is solving rent disputes, and the other one is maintenance and repairs and so forth. It's an area that I have a big problem with myself, and I think you have really touched on a vital point when you say that judges should be and ought to be the ones to assess the situation in a very quick fashion.

I think the system, as you said, needs some fixing, because especially dealing with maintenance and property standards problems has been a plague, if you will, not only for landlords and tenants, and that's where many disputes sometimes arise, but also for the enforcement people.

Coming from a municipal council, I'll give you a little bit of — and then perhaps you can tell me that yes, indeed, we should tell the government to go after the judges and be more prompt and more stringent about it. In the city of North York, for example, two years ago they had three people looking after inspections and apartment buildings and deficiencies and stuff like that. They've got to go first to see if indeed there is a problem once they get a complaint. They've got to go and take a look, if they are lucky enough to find a superintendent at the site; otherwise they've got to go back another time. They have to ascertain that there is a problem, there is a leak or whatever it is. Then they say: "I'll come back next week. Are you going to fix it?"

He goes back next week and nothing has been done, so he's got to issue an order. Then in a month's time he's got to go back because they say, "In order to fix that, I need a month." There is a particular time he has to give those people. A month goes by and nothing has been done, so now he issues a summons, whatever, an order, and he goes to court. It takes months and months and months.

It's been postponed once, postponed twice, postponed three times. In the meantime, that particular staffer has to be there every time. At the end, the judge may say, "Are you going to do it?" He says, "Yes, I'm going to do it." "Okay, we'll give you six months." No fines. By the time the landlord gets to fix whatever deficiency there is, something else has cropped up.

How are we going to solve this particular problem, which is a major problem between tenants and landlords? How are we going to solve it?

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Mr Putman: First of all, the example you use is an extreme example and is a rarity.

Mr Sergio: It's an everyday problem.

Mr Putman: No, sir, it's not. The vast majority of landlords invest money in their own buildings and once they are notified of a problem, they fix it promptly. I agree with you, sir, there are a few irresponsible landlords, and I would agree with the government's position that it would raise the fines and try and speed up this system to deal with those rare landlords who are irresponsible.

Mr Marchese: Mr Putman, thank you for the presentation. You raised a few points and I want to ask one of the staff of the ministry if they can answer this. The point you made about there being no tests of severity is interesting. There will always be deficiencies, but you're saying in the future a simple violation can become an offence. I'm not sure whether at the moment there is such a test of severity. In the future, will simple deficiencies be violations?

Mr Scott Harcourt: I'm Scott Harcourt from the ministry. Would you like me to answer that?

Mr Marchese: Yes.

Mr Harcourt: Right now, under property standards bylaws you must get a work order before it becomes an offence. In other words, you've got to have it issued, not just violation of a property standards bylaw. The proposal is to make violation of a property standards bylaw an offence under the act.

Mr Putman: Here is an example. Up in that top right-hand corner there is some plaster that's a bit frayed and there are wires that come down that are not properly protected. That is a violation. Under the proposed system, the bylaw inspector would come in and give you a ticket, and you would have no opportunity to correct the problem before there would be a violation. All I'm suggesting is that the landlord should be given that opportunity of a week or two or whatever to effect the repair, and a responsible landlord will do that.

Mr Marchese: Does staff have a response to that?

Mr Harcourt: That is correct. If there's an outstanding issue such as the item described by Mr Putman, you could come in and be ticketed right away.

Mr Marchese: Let me move on to another issue, capital expenditures. You were talking about the present system not being adequate in terms of your being able to recover enough money to be able to do some major repairs. So the 2% that's built in, plus the 3% that you can apply for for major capital expenditures, you're saying isn't sufficient.

Mr Putman: That's correct.

Mr Marchese: The 1%, in addition, is not sufficient either.

Mr Putman: No, sir.

Mr Marchese: So when you get these capital dollars for capital repairs, you're actually spending it all the time, obviously.

Mr Putman: Yes.

Mr Marchese: You make an application saying, "My God, the garage is in bad shape and I need more than 5% this year," and you get a response saying, "Sorry, that's all you can get." Is that the idea?

Mr Putman: Yes. The problem is not when you go to do small repairs like a fridge or a stove or something like that. The problem is finding the \$1 million and \$2 million and \$3 million garage renovations and whatever.

Mr Marchese: Right. I'm presuming that the money you get on a yearly basis should be or is being put into those kinds of things that crop up, unless after the 10 or 15 years you've been in the business, all of a sudden you have a major problem that's developed, you now can't afford it and you need beyond that cap to fix it. Is that what happens, you have a major problem that all of a sudden emerges and you can't afford to fix it? It's not enough under the present system to do that? Is that what happens?

Mr Putman: Yes. One needs to remember that major problems in a sense don't crop up; they are inevitabilities. Sooner or later, you have to repair your underground garage.

Mr Marchese: I understand that, but I'm assuming that you're getting sufficient money to do your repairs and that in fact some of the money you're probably not using is being put aside for things that may emerge at some point down the line. But you're telling me that every cent that you get, you spend. Is that the case?

Mr Putman: Sir, my point was that what there is not sufficient allowance for at the moment is to fund the major items, and that's the problem.

Mrs Ross: You've certainly given me some food for thought here. I'd like to pursue the issue of the dispute

resolution. I don't know if you heard our last presenter. He talked about the landlord and the tenant sitting down and trying to work out disputes on their own before any mediation or court or anything like that. What would you think of that idea? Would you think that a lot of the disputes could be handled that way?

Mr Putman: If you look at the functioning of the existing landlord and tenant provincial court system, one of the primary reasons it's so efficient is because the judge stands up at the beginning of the day and tells everybody to go out and settle. When a judge tells you to go settle, you go settle.

The difficulty is the rent program system is designed and developed in a way that the government does not have sufficient confidence in the parties to allow them to resolve their own matters, and it is not possible to have negotiated settlements. So to answer your question, yes, negotiated settlements are critical in speeding up the system, and landlord and tenant is a very good example of that.

Mrs Ross: Okay, but I guess my question was, he said that oftentimes the tenant doesn't have access to the landlord. If access was made so that they could sit down and discuss the issues — for instance, if it was a fridge that needed replacing — they could sit down and discuss the issue before going into that very long process of going through the court system, wouldn't you think that would be an easier way to solve the dispute?

Mr Putman: First of all, most tenants, or the vast majority of tenants, have relatively easy access to their landlord. Every month they have to pay their rent to somebody, and that somebody is a representative of the landlord.

There needs to be some method of initiating an application or whatever. That's what triggers a dispute resolution. Okay? Yes, providing easier access is — but how do you do that? One of the most effective ways is if you can go down to University Avenue and sit in the front of the courthouse with the other person. It's amazing how quick things get resolved.

Mrs Ross: I guess if you look at it, and I think you would agree, most landlords are not unscrupulous people. We've heard there are some, and obviously we all know there are. But most landlords want to keep tenants in their building. That's the whole purpose of putting rental accommodation out there: to get people to come and rent their building. The whole goal is to keep those units occupied, so they would like to resolve things, I'm sure, before going to court.

I guess I'm still pursuing that. I think that's probably the best way to resolve disputes. I agree with him that they should sit down and discuss — I was on a trip once recently, and I can't even remember where it was, but we were in a bus coming back from somewhere, and the people on the bus were from all different parties and different groups and organizations and the feeling was, "Wouldn't it be great if we could just sit down and talk things out, because it would solve a lot of things?" I guess my whole point here is, I agree with him that I think the first step would be to talk with the landlord and sit down and discuss the dispute.

Mr Putman: Absolutely. You'll find that most landlords make themselves available simply in order to avoid

the existing dispute resolution system. They want to stay as far away from the court and as far away from the Ministry of Housing as they can.

The Chair: Thank you, Mr Putman. We appreciate you coming out and presenting to us tonight.

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RICHARD FINK

The Chair: The next presenter is Richard Fink, from Fink and Associates. Good evening, sir. Welcome.

Mr Richard Fink: I'll make a few comments and then I'll invite your questions. Let me just introduce myself: I've been practising in the area of landlord and tenant law for 20 years, primarily representing tenants. I've perhaps represented 300 or 400 tenants' associations in the last 20 years and have been involved in all aspects of landlord and tenant law.

A few of the items thrown out in the New Directions paper caught my attention, having had the opportunity to deal with these situations in the past years. One of them was the idea of harassment police. Prior to the Rental Housing Protection Act, our firm represented tenants in the Bathurst and Eglinton area who were having their apartments either demolished or converted to equity co-ops. The current market value of apartments in the Bathurst-Eglinton area is slightly over \$50,000 per unit, and the buildings that were converted to equity co-op are selling in excess of \$130,000 per unit. If your fine is a maximum of \$50,000, obviously the amount of profit to be gained by the conversion would make the fine nothing more than a licence fee for conversion.

The second problem is that the types of harassment that tenants experience in the Bathurst and Eglinton area are sometimes difficult to define as harassment. There was a case that during the Stanley Cup playoffs the cable television mysteriously was cut off; the landlord claimed it was on account of building repairs. During another incident, members of the Satan's Choice motorcycle gang moved into an apartment building. If the harassment police start laying charges in those instances, you're going to have landlords say: "I don't know why the cable television broke. It must have been the carpenter; he cut the wrong wire." "I'm sorry. I made a mistake; I rented the apartment out to a few hooligans. I apologize." Having experienced this type of scenario 10 years ago, there are maybe going to be convictions, maybe not, but the fines on first offences are not going to be anything to dissuade landlords from engaging in this conduct.

Another problem is that you're never going to have sufficient harassment police, because every time something goes wrong in a building that's subject to a rumour of some type of conversion, tenants will be calling the harassment police in a great deal of agony, saying: "My landlord doesn't answer my calls any more. I can't get repairs done." "Some landlord has bought my particular unit and is telling me that if I am thinking about repairs, forget it; I'll never see it again."

Each and every complaint during a conversion period becomes harassment. I remember, as a lawyer, fielding all these phone calls. Some were legitimate, some were not, but it became such an avalanche of calls for each build-

ing that obviously I had to have clerks and secretaries deal with it or I'd spend my entire day trying to soothe tenants. Harassment police will never be able to keep up with the deluge in this type of situation.

What separates me, I suppose, from my confrères who also advocate on behalf of tenants is that I have supported from time to time conversion of rental housing into equity co-ops. The reason for that is that over the 20 years I represented tenants at rent review it was quite apparent that tenants were paying for the costs of the actual repairs of the building. If the building required new roofs, new concrete, new pipes, new refurbishings, it was the tenants who ended up paying the bill through capital costs passed through the rent increases.

I've heard figures bandied about in the newspapers of \$10 billion; the landlords are saying \$10 billion worth of repairs. The green paper from 1991 put out by the Ministry of Housing that was a precedent for the current legislation said that the buildings needed \$4 billion to \$7 billion worth of repairs on \$8 billion worth of rents. If you use the cost pass-through method the ministry is currently using, that would raise the rents by about 14% over and above the annual increases.

Given that tenants inevitably end up paying for these repairs, the conversion to equity co-op would give tenants the opportunity of actually having an equity stake in the apartments they're already going to have to make the repairs for. The problem is that if it's allowed to run as it did before 1986, then you're going to have a great deal of displacement and a great deal of unfair treatment of tenants as rapacious landlords — who get into this type of conversion business particularly, in my experience — will cause tenants a great deal of harm and grief.

My solution would be that once tenants have voted to do the conversion a government trust agency step in to monitor and provide for the conversion and hold the units in trust where tenants are unable to pay for their equity co-ops, so they could remain in the units indefinitely. If one leaves it to the landlord to monitor the situation, there is a tremendous push to get those tenants who don't wish to be part of the conversion out of their units, and that is obviously patently unfair.

The other side of these equity co-ops is that currently they're governed by absolutely no legislation. They're registered in the Land Titles Act under a clerk's definition that they should receive a separate page in the land titles book. They're based in law from 1860. During the conversion process, I was involved in at least three cases where the developer, the people buying units and the tenants were engaged in three-way legal struggles, primarily over whose responsibility various maintenance items were. Unless there's some statutory definition in this process as well, it will lead to a great deal of chaos.

The second point I wish to make is that it would be a necessity for the government to actually come out with some type of study where it could say how much repairs the apartments in Ontario actually need. If it's more than \$10 billion, if it's, say, \$20 billion — and it may well be given that there's been a paucity of repairs that I've observed coming out of the rent review system over the last four years — you're looking at rent increases approaching 30%.

I noticed that in the New Directions paper they said: We're going to prevent the type of high rent increases we saw during the late 1980s. I'd ask the committee to make the following observation: If inflation is at 1.5% and rent increases under the New Directions paper are 6.8%, is that any difference of a rent increase of 12.5% when inflation was running at around 7% and 8% as it was during the late 1980s? Presumably some of that inflation was higher wage settlements and right now wage settlements are in some cases decreasing, not increasing.

That 12.5% didn't come out of the air; 12.5% was the average rent increase the rent review program was granting in the terrible late 1980s when we had all these unnecessary repairs being done, when we had large capital projects under way, when practically every building in the city had scaffolding on it as landlords took the opportunity of a generous system to repair all their spalling brickwork. But the point is that the increases were only four or five points over inflation.

The current program, which obviously is aimed at trying to correct the lack of repair that's gone on in the last four years, is the same four or five points over inflation. The net result is that tenants are not just going to face 6.8% in one year, they're going to face 6.8% over multiple years, as landlords are compelled, mostly through necessity of losing their investment, to make these repairs.

Let me just touch on two very brief points. One is that the New Directions paper is calling for landlords not to have any confines on unnecessary repairs. Having spent a year of my life fighting for the tenants at Balliol, who were the first tenants in the British Empire to go to court to force a landlord not to do repairs, as a backdoor move to try and avoid the rent increase, I can say that it takes any degree of confidence out of a rent review system where tenants see repairs that are totally unnecessary, see landlords entering their apartments to do their repairs over their protests and refusals, and then see their rents go up by a relatively large amount. I think the failure, particularly in ridings where tenants were seeing this and having this happen to themselves, undermined the Liberal government at that time and led us to the next government.

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The final point, which is obviously an important point for lawyers, is the procedure in adjudication of rent review and landlord and tenant. Of course, there is going to have to be some agreement with the federal government if you're going to move landlord and tenant out of its current general court residence, but my experience in landlord and tenant court is that it's practically unaffordable for a lawyer to go there. Clerks thrive there, but in my experience they do a haphazard job in representing tenants — and landlords as well, I might add. They don't do much research or much work in preparation for the hearing, because even though they don't have law society fees and insurance and overhead to pay, they are hard-pressed not to charge a few hundred dollars for even a small case, which many people find difficult to pay for.

If lawyers were going to be introduced in a meaningful fashion, if the decision-making is more than just the

honourable justice telling tenants, "Go out and settle this; I've got too many things on my list," and you end up with a bit of rough justice, if it's going to be something more than that, obviously it should be taken out of that court.

My caution is that over the course of 15 years of being at rent review hearings practically every night, the level of adjudication was extremely poor in its quality. The problem was that most of the appointments to the Rent Review Hearings Board as it existed, to the rent review administrators, to the rent review officers, were political. My suggestion would be to have one large board deal with all these various items but to have some blue ribbon panel make suggestions on the appointments, and obviously as well to provide mediation services that parties can have access to with professional mediators to try and stem some of the flow of litigation. I don't think it has to be a complicated system, but it has to have sufficient resources and it has to have people who are able to adjudicate on these cases so that the parties appearing before them don't consider they're into a kangaroo court.

I always remember one case where the tenants were yelling and screaming at me, "This is not fair; it's all stacked against us," and then in the hallway I was speaking to the landlord, who I went to school with, and he said, "This is a kangaroo court." This was a case of no one being very happy with the process, and a system that has no one happy with the process is just open to further punishment to tenants and a further disaster.

Most of my current practice is devoted now to workers' compensation law, and I might just say on behalf of my employer clients that if the government disrupts affordable housing for workers who are entry level in labouring jobs and factories, who are being paid \$8, \$9, \$10 an hour, those employees are going to be displaced. Although the government talks about creating jobs with repairs and building new housing, the flip side is that you'll lose jobs if you don't keep affordable housing for people who are in entry-level positions. Thank you for your patience.

Mr Marchese: Thank you, Mr Fink, for your suggestions and recommendations. One of the things I know that very few people probably understand is co-ops in general, and then when you throw in the mix of equity co-ops it confuses it as well. When people hear that, they think co-ops are all the same. Could you explain very briefly what the difference is between an equity co-op and a regular housing co-op?

Mr Fink: What you call probably non-profit and equity: Equity co-ops look like condominiums. People more or less own their unit, and if the value of the unit rises or falls, the owner reaps the profit. Non-profit co-ops don't have that profit measure. My experience with, say, 740 Eglinton West or the ones down on Wellington Street in the market area is that they work roughly the same. The tenants participate in day-to-day activities. They farm out a lot of responsibility. The difference is that you can't take it with you, so to speak.

Mr Marchese: Right. You didn't comment on rent control at all and you didn't comment on this government's desire to decontrol. Do you have an opinion on that?

Mr Fink: The problem is that you'll diminish the affordability of housing, obviously. But the bigger problem is that when tenants wish to stay, there's going to be pressure to have them leave, and if there's a major gap between market rents and the rents the tenants are actually paying, those tenants will not be able to stay through the pressure in many units. If there's a housing crisis again, a vacancy crisis — the one now is mainly in the lower-cost units — you'll see landlords who can turn their buildings over, make a large buck.

They'll be the ones who take over as opposed to, say, pension funds or conservative offshore holders or banks and what not, because the pension funds will not be making much return; given that they're very conservative, they don't push tenants out. Somebody will say: "Jeez, the rents are so low, the location's so good, I could push tenants out. I could make so much money. I'll try and buy this building from the pension fund." So you get the — I don't like to use fiery analogies — scum rising to the surface if you allow this type of displacement.

Mr Smith: Thank you very much. A couple of questions: I'd be interested to find out what your thoughts are in terms of the proposal to eliminate municipal approvals for conversion, and secondly, you raise the issue of no legislation in place to govern equity co-ops. Would you share with the committee what statutory definitions you might anticipate that would be needed for this specific area?

Mr Fink: If you allow demolition you'll see the same pattern as was present in 1985; I think the vacancy rates are roughly equivalent between the current year and 1985, and what you saw was hundreds of units per year being lost as affordable housing. The pressure areas there were along Yonge Street, I think practically entirely along Yonge Street, the length and breadth of it, both small units down at the foot that I remember representing some tenants in and some very large buildings up around York Mills, where there are some very wealthy and swank condominiums now residing.

If the bulwark to prevent demolitions is removed you'll see a lot of demolitions. I've always felt it would be better for landlords to build on undeveloped land than on developed land. The reason these small or moderate apartment buildings are ripe for development is not because it's more attractive to knock down buildings than to go on undeveloped land; it's because the buildings themselves hold the value of the land down, so they become an economic opportunity to demolish the units, because if you just had undeveloped land the property would be worth more. It would be a sad day for tenants' rights and for tenant security if municipalities lost their demolition control.

Mr Sergio: Mr Fink, your many years of experience make you an authority on all the facets of rental, condominium conversion or whatever. Did Mr Leach ever contact you before he wrote this particular piece of legislation?

Mr Fink: No, Mr Leach didn't contact me.

Mr Sergio: That's too bad.

Mr Fink: I spent hours and hours with Charlie Harnick's residents when he was a member of provincial Parliament, giving them legal advice, and since Charlie got elected I haven't heard from him yet.

Mr Sergio: I have one more question for you. Today we had a lady here who is the owner of an equity co-op. She was complaining that because of the Rental Housing Protection Act they can't convert to condominium. That's within the city of Toronto. After, she put all the tenants together wanting to purchase the individual units. If 100% of the tenants want to purchase their own units, I would have to look at that seriously. What would you do in a situation like this?

Mr Fink: It's very rare that 100% want to purchase. If there are maybe five or six tenants in the complex, that's possible, but it's very rare that 100% want to purchase because human nature generally doesn't work like that. I've always felt that conversion is good; it's good for people to own their own properties, and if you take one of the average properties, you can probably look at any apartment and say it needs \$15,000 to \$20,000 worth of repairs per unit. I think the people who are going to spend that money, who are inevitably the tenants, should own the unit.

The problem is, what do you do with half of the building or a third of the building or even one unit that doesn't want to convert? Do you squeeze them out?

Mr Sergio: A mortgaging problem.

The Chair: Thank you, Mr Fink. We appreciate your attendance here this evening.

Mr Sergio: Mr Chairman, I think it would be of interest to all the members if he could finish the answer, please.

The Chair: Thank you very much, Mr Fink. We appreciate you being here.

Mr Fink: My pleasure. Thank you.

The Chair: The next presenter is Richard Preston from the Canadian Auto Workers. Is Mr Preston from the Canadian Auto Workers here? No.

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ARLINGTON PARK ESTATES (1989) LTD

The Chair: Joseph Hacohen from Arlington Park Estates. Good evening, sir, and welcome to the committee.

Mr Joseph Hacohen: First, thank you for giving me the opportunity to appear in front of this committee. I'd just like to make a general comment after listening to the people before me. Everybody talks about rental housing as being a necessity. I believe that food is also a necessity, and we should control prices in supermarkets. Food is more important maybe then shelter, something to be considered.

Mr Tilson: If the NDP had stayed in power much longer, I'm sure they would have been there.

Mr Hacohen: If you cannot control the prices in the supermarket, maybe we shouldn't control rental housing.

Mr Marchese: That's his point. He's on your side.

Mr Tilson: I knew that too.

Mr Hacohen: I've met with Mr Tilson before. Unlike members of the NDP, he was willing to listen; the NDP wasn't listening. I met with Dave Cooke, who was the Housing minister. His response to me was, "I just feel sorry for you, but there's nothing I can do."

My family and colleagues suffered tremendously as a result of controls implemented under the NDP govern-

ment. Currently I encounter problems such as rent below market value. I have units that legally are charged \$380 per month, which includes parking and hydro. In the same building I have many two-bedroom units which are legally registered at much lower rents than the one-bedroom apartments.

Air conditioners are legally not included in the base rent. However, many tenants agree to pay extra for the use of an air conditioner. The NDP government ruled that it would be illegal to charge extra, even though both the tenants and the landlords agree and the usage is not included in the base rent.

In reality, I'm subsidizing my tenants and accumulating losses at the same time. As a landlord I am forced to sell my product, with is a shelter, to my customers, the tenants, below cost. Wouldn't you like to buy a \$100 bill for \$75? Maybe the NDP people would like to do that. While this seems normal in the case of non-profit organizations, you must keep in mind that my company is still attempting to run a business, hoping to have real profit.

I've suggested several alternatives in the past. In my opinion, the best option is to scrap the NDP's destructive rent control legislation. Closing rent control offices will help reduce the deficit, which will be one of the major steps towards the recovery of the economy, the province, and the expansion of free enterprise and downsizing of government.

This government is suggesting to protect tenants rather than the units. I welcome the proposal of landlords and tenants negotiating rents without regulatory restrictions. I would like to suggest that the landlords and tenants may negotiate and structure their own agreements, without restrictions, which would determine rents, annual increases and separate charges such as parking and other possible charges relating to the usage of an air conditioner.

As a landlord I feel I should have more of a say in the running of my business. I'm not presently in business to subsidize my tenants. I pay the same amount in realty taxes, hydro, heat and water as other building owners; however, my income is much lower. My case may be unique but I feel that I deserve some rights too.

New Directions fails to deal with chronically depressed rents. The new legislation should include higher increases — say, 5% above guidelines — for up to three or four years for units which are 15% below the average rent computed by CMHC.

A few years ago I received a letter from David Turnbull. He made a statement in connection with the legislation by the NDP. He said: "The legislation also fails to take into account...a building that has chronically depressed rents. That's unfair." I think it's time that this issue be dealt with, and the new legislation seems to miss that point.

The proposed new legislation claims to decontrol the current system; however, it will recontrol the unit as soon as it is reoccupied. Unfortunately the landlord may be worse off as a result of losing the current maximum rent. In most buildings, landlords are charging rents which are lower than the allowed maximum due to current market conditions. This is done with the hope that one day a better return on investment can be obtained. This legisla-

tion is retroactive, as landlords are losing previous increases which were ordered and allowed by the Ministry of Housing, due to losses and capital expenditure, by allowing new tenants discounted rents.

By discounting rents during hard times, landlords are caught in a downturn in the market without the ability to have future increases when a turnaround occurs. When a vacancy opens during a downturn of the market, the lower, discounted rent would become the maximum rent. The new legislation should allow for a total decontrol of the units upon vacancy or have more favourable rules dealing with discounted rents.

New Directions of the proposed legislation deals with issues such as rent reductions, fines, penalties by property standards officers and harassment enforcement units to protect tenants. The new legislation is called "tenant protection legislation," while I believe that it is landlords who currently need more protection than tenants.

As a landlord I am being harassed constantly. My property, the apartment building, is often vandalized by tenants. I believe that your proposal will lead to similar actions taking place. Tenants will sabotage the property, then will be able to call the property standards inspector due to neglected, run-down property conditions. The inspector will impose a fine. The result is obvious: The landlord will be the loser once again. Protection of the landlord is desperately needed and is long overdue.

The new legislation will also deal with subletting of units in a strict form, a direction which I welcome. However, I ask you to assist landlords in the legislation on the subject of non-payment of rents as well as on stricter rules concerning tenants who are constantly late with their rent payments. If I do not pay my mortgage, hydro, gas, water and other bills on time, a late penalty is imposed. Why are tenants exempt from being on time?

Mr Tilson: Thank you, sir, for your presentation. We've talked about these issues in the past. You're right that the paper does not deal with chronically depressed rents, and perhaps this is an opportunity in which you could elaborate more about that. You're right again: My colleague Mr Turnbull and I, when we appeared at Bill 4 and Bill 121 hearings, specifically spent some time on that and expressed a concern about that issue.

Could you elaborate on how that issue can be rectified? There's no question that there are a number of chronically depressed rents across this province, except I suppose one has to be fair to the tenant as to how one rectifies that. Tenants can only sustain increases of certain amounts, and to rectify that properly might be rather difficult. Could you elaborate on what you've said in your paper?

Mr Hacohen: Sure. First I'm suggesting moderate increases, in cases of depressed rents, over time. If an apartment is occupied and the tenant is paying an extremely low rent, he'll never move out and the landlord will never be able to pay his bills. I suggested maybe an extra 5% over so many years. If I have a tenant paying \$500 for two bedrooms, that's not a lot of money as far as an increase is concerned. In my specific building I have one bedrooms renting for \$650, two bedrooms for \$500. My one bedrooms are constantly moving out. Two bedrooms, nobody moves. It's not right. I should be able to cover my expenses at least.

Mr Tilson: You're right. The difficulty of the chronically depressed rent is, why would anyone ever move out? I mean, there are stories about that. I think reference has been made in these hearings to New York, some of the apartments in New York where people are living there indefinitely, because why would you move out? You'd be foolish to move out.

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I have a feeling you've had some experience with respect to process. One of the criticisms of the existing process we have now is that it's too slow. Both landlords and tenants have spoken about that issue, and a mediation dispute resolution system is being proposed. Have you got any specific support or opposition to that?

Mr Hacohen: I would like stricter guidelines when this happens. At the present time, tenants who are not paying their rent, you have to take them to court. The court may issue a judgement. The tenant still doesn't pay. You go and get the sheriff. A day before the eviction, which could be a few months down the road, the tenant comes in, pays you everything he owes you and he's still okay, which means the judgement is meaningless. So what's the point of having the legal system? If you have a judgement it means the guy should go to jail, if he's a criminal. If he's a tenant, then he should be out. If the judgement says you're out, you're out. Why is a judgement for one not a judgement for the other? It's the same thing.

Mr Curling: Thank you very much, Mr Hacohen. A very interesting presentation. But let me follow up on what you just said a minute ago. Someone doesn't pay their rent and the judgement has stated that they should pay the rent. They still pay it later on, but pay up. They should go to prison because they didn't pay the rent?

Mr Hacohen: No, that's not what I meant. If somebody's a criminal and there's a judgement against them, they go to prison.

Mr Curling: No, but they didn't pay the rent.

Mr Hacohen: If the tenant doesn't pay the rent and there's a judgement against them, this judgement is meaningless as long as the guy pays up. If you rob the bank and you take money from the bank and then you give it back, that means everything is okay?

Mr Curling: So not paying the rent, you consider this as like robbing a bank?

Mr Hacohen: No. I knew that you were going to jump on it, but what I meant to say is, a judgement for one should be a judgement for another.

Mr Curling: No, I just want to understand what you're saying because —

Interjection.

Mr Curling: I'm not feeding him. He's the one who stated that.

Mr Tilson: He didn't say that at all.

The Chair: Mr Curling has the floor.

Mr Curling: I just want an understanding, sir, of what you're trying to say.

You're saying also that while you know there's a maximum rent that can be charged, legal rent that can be charged, and sometimes landlords do not charge those —

Mr Hacohen: Many times.

Mr Curling: Yes. They do not do that because they can't get the tenants who are able to pay that.

Mr Hacohen: It's not that the tenant is not able to. That's what the economy dictates.

Mr Curling: That's what I mean. They just don't earn the money. They don't have the kind of income to pay, so —

Mr Hacohen: If you're a millionaire and you come to my building to rent an apartment, I cannot charge whatever you can afford. You'll pay what the market dictates.

Mr Curling: I want to understand this. A maximum legal rent says that you, as a landlord, can charge, for example, \$1,000 for this two bedroom, and then you turn around and then you say to them, "I'll give it to you for \$850." So what's wrong with that?

Mr Hacohen: There's nothing wrong with that. If that's what the market dictates, it's acceptable.

Mr Curling: That's what the market dictates. You don't blame the tenant —

Mr Hacohen: I'm not blaming the tenants.

Mr Curling: I just want to understand. You're saying later on now that the problem is, if this new legislation comes in, it wipes out maximum rent. You want to have your cake and eat it. I'll read what you say: "Unfortunately, the landlord may be worse off as a result of losing the current maximum rent. In most buildings, landlords are charging rents which are lower than the allowed maximum rent due to current market conditions."

Mr Hacohen: So what I'm saying is, if you want decontrol, leave it decontrolled. Let the economy, let the market, run its terms. But what I'm saying is, if I'm giving everything at half price today, then don't control it again. Leave it decontrolled.

Mr Curling: The New Directions where they are going, you have another direction you could go. As soon as that tenant leaves, you can jack the rent up any amount you want, according to this law. You could go to \$2,000. So the legal maximum rent —

Mr Hacohen: I can charge \$1 million. I will have an empty building.

Mr Curling: This is even better for you than the legal maximum rent. Why would you want to have your cake and eat it in one respect, to say, "My golly, we're going to lose this legal maximum rent if this tenant leaves"? In the meantime, they're giving it to you. This government, which is going to protect the landlord, is saying, "I'm going to give you a better deal. This legal maximum rent, out the window. You put your price on," not even the legal maximum. You put your price on.

Mr Hacohen: I'm saying perfect, as long as there are no more controls on that unit.

Mr Curling: You're saying both things.

Mr Marchese: Mr Hacohen, how long have you been in business in this field?

Mr Hacohen: Since 1982.

Mr Marchese: Are you doing okay?

Mr Hacohen: Am I doing okay? Let's put it this way: My house was paid off. Now I have a big mortgage on it because of losses which I incurred due to the policies implemented by the NDP.

Mr Marchese: You were doing okay from 1982 to 1990?

Mr Hacohen: I was doing like any businessman would do.

Mr Marchese: And since 1990, when rent controls came in, you've suffered?

Mr Hacohen: Absolutely.

Mr Marchese: How much would you say you've lost in terms of money?

Mr Hacohen: I've lost enough money. It doesn't make a difference for this committee how much money I have lost. If you want to make it look like the landlords are rich and they can afford losing, that's not the case.

Mr Marchese: But you're still doing okay, however? You've survived through it all, have you?

Mr Hacohen: Have I survived? If my net worth is lower —

Mr Marchese: We didn't put you out of business, in other words.

Mr Hacohen: In a way you did. If I had to mortgage my home to the limits, then you put me out of business.

Mr Marchese: Mr Hacohen, we've had the High Park Tenants' Association here tonight and they made a very strong case for keeping rent controls. It was a very lively group, very passionate about their homes and what this measure means to them and what you're supporting. We've had the North Toronto Tenants' Network, which I think is the area where you're — I'm not sure where you are, actually.

Mr Hacohen: I'm in Mississauga.

Mr Marchese: I see. And we've had the tenants' advisory committee. These types of people here are the real people whom you house, I suspect.

Mr Hacohen: Yes.

Mr Marchese: Very concerned, very anxious and very frightened about the implications of what this is doing. They don't want a system that's decontrolled because they're worried about the implications of what it means to their security. I understand you wouldn't be charging \$1 million, because as you said earlier on to a point here, you'd have an empty building. But you will charge however much you can get, and I understand that owners would do that, would want to do that if they can get it. That's the fear the tenants have, that once it's decontrolled, you will raise that rent as much as you can possibly get. Is that not true?

Mr Hacohen: I'll answer you with a question. When you go to buy a car, do you pay what they ask you or do you pay what you should be paying? If there was no choice, you'll just pay whatever they charge you, but the market will dictate the terms. If you let the market run its course, apartments will be available, and probably at a lower rate.

Mr Marchese: You see, I'm afraid of letting the market dictate the terms because that's Conservative and to some extent Liberal politics.

Mr Tilson: We're pals, Alvin.

Mr Marchese: I don't support a market-driven economy that leaves in its trail a lot of victims. You see, that's the problem. This politics leaves the victims, and

you obviously — maybe you care, maybe you don't. But that's why some of us are social democrats and some of us are socialists, because we believe the government needs to be there to protect the majority of people who become victims of your market system. That's our difference. We're probably likely not to agree.

Mr Hacoheh: Of course. Your ex-leader wanted to own all the buildings in the city anyway, because that's the socialism approach.

Mr Marchese: No, no. There are many different understandings of socialism and I'm not sure where you're leading to, but we have different understandings on that.

Mr Hacoheh: The biggest landlord could have been Bob Rae.

Mr Marchese: Let me tell you, the majority of tenants disagree with you and disagree with them.

Interjections.

The Chair: Let Mr Marchese finish.

Mr Hacoheh: Of course. If they can get something — I'm not saying for nothing — for less than it costs, why not?

Mr Marchese: We'll just have to let them decide whether or not they agree with Conservative politics and directions and with you, and that will come in three and a half years.

The Chair: Thank you, sir, for coming to our committee and making a presentation. We appreciate your interest.

Mr Hacoheh: Is the other person here?

The Chair: The other person's not here but —

Mr Hacoheh: Maybe I could keep on going. I suffered long enough.

The Chair: The committee is recessed until 1 o'clock tomorrow.

The committee adjourned at 2040.

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président: Mr Jack Carroll (Chatham-Kent PC)

Vice-Chair / Vice-Président: Mr Bart Maves (Niagara Falls PC)

*Mr Jack Carroll (Chatham-Kent PC)
Mr Harry Danford (Hastings-Peterborough PC)
Mr Jim Flaherty (Durham Centre / -Centre PC)
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*Mr Mario Sergio (Yorkview L)
Mr R. Gary Stewart (Peterborough PC)
Mr Joseph N. Tascona (Simcoe Centre / -Centre PC)
Mr Len Wood (Cochrane North / -Nord ND)
Mr Terence H. Young (Halton Centre / -Centre PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr Dave Boushy (Sarnia PC) for Mr Stewart
Mr Alvin Curling (Scarborough North / -Nord L) for Mrs Papatello
Mr Bert Johnson (Perth PC) for Mr Danford
Mr Gerard Kennedy (York South / -Sud L) for Mr Grandmaître
Mr Bruce Smith (Middlesex PC) for Mr Flaherty
Mr David Tilson (Dufferin-Peel PC) for Mr Tascona
Mr Wayne Wettlaufer (Kitchener PC) for Mr Young

Also taking part / Autres participants et participantes:

Mr Scott Harcourt, Ministry of Municipal Affairs and Housing

Clerk / Greffière: Ms Tonia Grannum

Staff / Personnel: Ms Elaine Campbell, research officer, Legislative Research Service
Ms Lorraine Luski, research officer, Legislative Research Service

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of Ontario**

First Session, 36th Parliament

**Assemblée législative
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Première session, 36^e législature

**Official Report
of Debates
(Hansard)**

Wednesday 21 August 1996

**Journal
des débats
(Hansard)**

Mercredi 21 août 1996

**Standing committee on
general government**

Rent control

**Comité permanent des
affaires gouvernementales**

Réglementation des loyers d'habitation



Chair: Jack Carroll
Clerk: Tonia Grannum

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENT

Wednesday 21 August 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Mercredi 21 août 1996

The committee met at 1300 in room 151.

RENT CONTROL

(The Chair) Mr Jack Carroll: Good afternoon. Welcome to the meetings of the general government committee as we listen to presentations on proposed changes to the rent control legislation.

ANDRADE CONSULTING GROUP LTD

The Chair: Our first presenter this afternoon, from the Andrade Consulting Group Ltd, is Mr John Andrade. Welcome, sir. Your time is 20 minutes. Should you allow any time for questions at the end, they would begin with the Liberal Party. The floor is yours.

Mr John Andrade: First of all, I should give the committee some background. Some people have referred to me as one of the old warhorses in the sense that I've been involved in one way or another with the rent control system for just about 21 years. I've been in private practice since 1979, representing the owners and managers of rental properties, so it's fair to say that while I'm a practitioner, the bias in my practice, in our firm, is that of representing the owners. I think that's reasonably well known to people in the field.

Our firm provides consulting services to landlords, financial institutions, pension funds and property managers. It's like déjà vu, because I've sat in this chair in this room on numerous occasions in the past as the government of the day from time to time has seen fit to make changes to how rents are regulated in this province.

I was involved with the Thom Commission of Inquiry into Residential Tenancies in the early 1980s and took part in the Rent Review Advisory Committee, which advised the Liberal government in 1986 in setting up what was then called the Residential Rent Regulation Act.

While my bias is clearly on the landlord's side, in that I represent landlords and owners, I want to give a few comments, not comprehensive, dealing with certain aspects of what is proposed from the point of view of a practitioner.

I want to touch first of all on the guidelines. There is a proposal, as the committee knows, in the government paper to essentially leave the statutory guideline as is, and I think that's reasonable in the sense that people have got accustomed to it. They essentially know it's configured. It's got certain advantages. It's a three-year moving average, so it's probably not susceptible to drastic changes on an annual basis. There's a certain degree of continuity and predictability.

Having said that, there are certain things which have to be borne in mind. The formula was supposedly based on

two things: a factor for inflation, that is, inflation affecting rental properties, and a factor for major expenditures and other items. Essentially this guideline was devised some 10 years ago and has been modified over time.

As a practitioner, what I found most disturbing was that during the previous government's tenure one Minister of Housing took what in my experience of 20 years was the unprecedented step of politically interfering with how the data were put together to arrive at a guideline which was to her liking; and certainly from my point of view as a practitioner I think it serves the public interest best if in this go-round we put in place certain rules — in statute is preferable to regulation — under which neither this present government nor any future government can simply administrate a fiat, a change in how things are calculated to achieve a desired result.

There's no question that the political approach plays the major role here, but once the government has decided on how the rules are to be, then direct political interference should not be countenanced.

There is another part of the guidelines dealing with capital expenditures, and there seems to be a belief that the 2% is for capital expenditures. Certainly all the studies which were done in the mid-1980s show that really 1% is for capital and 1% for return on investment. That's how the program was originally devised, and I suggest that simply because the previous government made an arbitrary decision that the 2% was for capital does not make it so, despite what some people east of Toronto may think.

I would also like to comment on the proposals concerning frequency of rent increases. It's proposed that they continue to be once a year. I think that's appropriate. People have become accustomed to that happening. The exception would be, because of the proposed vacancy decontrol provisions, where they come into effect, obviously in a turnover of a unit midyear there should be an entitlement to adjust the rent at that point without regard to the previous anniversary.

I'd like to speak for a couple of seconds concerning the proposals for how above-guideline rental increases are generated. The government, as I understand it, is making two proposals: that a landlord can make an application for above-guideline rental increases where there are capital expenditures and where certain operating costs justify the increase. It's proposed that there be a 4% cap on the capital expenditures and that there can be a two-year carry-forward, a two-year period during which, to the extent that your capital allowances exceed the cap, they can be carried forward.

From a public policy perspective I think this is an improvement over the current system. Under the current

system there is simply no return on capital expenditures. The proposed system I think will help arrest the deterioration which is taking place in rental housing because of the inability to finance repairs and hopefully will correct the deterioration which was precipitated by previous housing policies.

There is one problem, however: The government proposes that the carry-forward be limited to two years. I'm not sure what the public policy perspective is there. Certainly if the government is saying there should be a cap with respect to capital expenditures and that cap remains in effect for each year, there doesn't seem to be any pressing reason why there should be a two-year cutoff. To have a two-year limitation sends a bad message to the investor community and to owners because essentially it tells them that you may do expenditures which you may claim and never have a chance of recovering because of a two-year limitation.

I suggest it's far better that the 4% cap be maintained but that there be an unlimited ability to carry costs forward. Tenants aren't being penalized. It's the owners who won't be recovering their costs until year X. Simply taking away that two-year limit sends a signal, "You can't get it all in one year, but we will recognize your costs eventually."

Certainly the proposal by the government not to put a cap on increases resulting from utility costs and taxes is welcome. My clients were faced with the unacceptable decision, under the previous government, under which they could face huge increases in municipal taxes generated by another branch of government but they couldn't pass on those costs even though they were completely beyond their control. They were limited to a 3% cap which applied to increases in municipal taxes, and there was no carry-forward in respect of increases in municipal taxes.

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I'd like to touch on one item concerning reduction in costs arising from cost decreases. One of the proposals by the government is that there can be a rent reduction where taxes go down. I don't have a difficulty with that. My clients will tell you — some of them have been here; some more will be coming — that doesn't bother them because their net operating income remains the same.

What was a severe penalty in the past was when landlords — it's still the law as we speak — were subject to rent rollbacks following expenditures for energy conservation. In Ontario today a tenant can make an application to have your rents rolled back if you're a landlord because you've done what every other branch of government encourages you to do: Put in expenditures to save money.

With respect to other areas of rent reduction, it's my submission that the abatement process is a better process to go by. There's a consideration to meld parts of the Landlord and Tenant Act with the Rent Control Act. If that's done or even if that's not done, it's my submission to the committee that the appropriate way to deal with rent reduction is by way of an abatement. That way there is no permanent impairment of rent, and if things are restored, the abatement can be lifted.

I'd like to speak briefly concerning the rent tribunal. The government has put forth certain options as to how the program should be administered. It's my submission that there should be an independent tribunal to administer the tenant protection program which is proposed.

I'm not casting any aspersions on the people in the Ministry of Housing. They do a good job. But quite frankly, justice has to be seen to be fair and impartial, not just fair and impartial. It's the reason why we have the OMB; it's the reason why we have many boards and tribunals across this province. There has to be a clear distinction, a clear demarcation, if you will, between the Parliament of Ontario and the executive branch of government, and the independent adjudicator which makes a decision.

There should not be a perception that a public servant can score points by being hard on a landlord or being hard on tenants. At the same time, that public servant shouldn't have to worry about his prospects of promotion because he's taken an independent viewpoint. It's my proposal that there should be a completely independent agency. If people who are presently rent officers under the Rent Control Act and other staff wish to be part of that program, in my view they should have to leave the public service and join that agency through order-in-council appointments.

It also may be interesting to note that the government could consider tendering out support services in such a tribunal. There's no reason why the clerical staff of the tribunal would have to be public servants. It could be done by the private sector through a tendering process.

With respect to appeals within the system, under the Rent Control Act there is no appeal on questions of fact where there's an error. There is an ability to request what's called a reconsideration, and that works well some of the time, but there should be a statutory right of appeal within the independent tribunal which deals with the question of appeals. There should be an appeal of right to one or three senior members of the tribunal.

Right now, surprisingly many reconsiderations are handled by, it appears, officers from out-of-town jurisdictions who simply aren't as busy as some of their urban counterparts. That may be a good use of human resources; it doesn't necessarily lend itself to the best way of decision-making.

Finally, I'd like to touch very briefly on the question of maximum rents. There's a proposal by the government to do away with maximum rents by freezing maximum rents and eliminating them on vacancy turnover. If we were having a true system of vacancy decontrol, wherein units become vacant permanently, doing away with maximum rents might be somewhat more palatable. As it is, we really only have a temporary system of decontrol for a brief moment in time during vacancy.

It's our proposal that maximum rents be maintained. My clients would tell you that they have earned these maximum rents, and they're able to charge tenants less when times are tough because they know that when times are better for all of us they can move up somewhat closer to the maximum level of rents. Doing away with maximum rents will simply force landlords into a straitjacket where they would have to, or they would feel the need,

to charge all tenants maximum rents every year, and that would be counterproductive.

Mr Alvin Curling (Scarborough North): Mr Andrade, you have almost become an expert in this field, and you have contributed. I've known you for a long time, and you try to be as fair as possible. In just the couple of seconds that I have, there are two quick things I want to raise to say how complex this issue of housing is. When we try to address it solely on these kinds of points, we'll never attack the real source of what's causing us to have an inadequate supply of affordable housing. When we try to address it through the rent control system, every government starts tampering with it, just as we've seen in the past. I think this also is a tampering with the process and not addressing it fully. You have set out the complexities. Do you feel that every individual, every resident in this province should have access to affordable and safe housing?

Mr Andrade: I think the issue is one of affordable incomes. I don't think we have a housing problem; we have a poverty problem which society as a whole has to address. If somebody is earning \$10,000 per year, you will never be able to deliver to that person housing at a rate which is self-financing. It behooves all of us to pay for that person's rent. I have no difficulty with that.

Mr Rosario Marchese (Fort York): Mr Andrade, many of the tenants that have come in front of this committee disagree with you and disagree with a lot of landlords who come here saying we should remove rent controls altogether. Many of them have made the case, as you have, that somehow you're not able to get the good rate of return you want under the current system because the guideline doesn't allow for enough money to have the necessary funds for capital expenditures. We think it does. Had I the time, what I wanted to ask you was for you to give us case studies to show us why it is, on a year-to-year basis, that what is given to you on a regular, yearly basis is inadequate. If you have the time, given that you don't here today, you might send me that information so that I can ask other people the question or use it as a way of dealing with these matters.

Mr Andrade: I'll try, but I'll say one thing: If you look at what's happened in restoration in this province, which everybody says is needed, it's fallen precipitously in the last five years. It's not coincidental that the law had changed.

Mr Bart Maves (Niagara Falls): Thank you, Mr Andrade, for a very thorough presentation, thought-provoking in several areas. One of the major problems, obviously, in Toronto is that we had 20 units built last year. The units that get built year over year has declined by a great number since rent control came in, and especially since 1990 when the government decided to enter into the business and compete with the private sector. In your mind and the minds of the folks you work with and work for, what's the chief reason why there is so little building going on in Toronto at this point in time?

Mr Andrade: There are many reasons, but I'll give you three very quickly. Number one is the red tape in going from developed land to the construction stage. Number two is that you have very high taxes once you build on the property. It's 25% of your gross rents.

Number three is attitude. Unfortunately, even with the changes done by the present government to try to improve investor confidence, people still worry that the screw will turn. That's why it requires a very strong signal from the government. Although in some ways the paper is a disappointment, it's a very good first step which is needed to restore investor confidence in the province.

The Chair: Thank you, Mr Andrade. We appreciate your coming and expressing your views to us and your involvement in the process.

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SCOTT SEILER

The Chair: Our next presenter is Scott Seiler. Good afternoon, sir.

Mr Scott Seiler: Hello and good afternoon to the committee. I would like to speak very briefly about rent control and my concerns about the elimination of such. One of the things I find very interesting is that the previous speaker just gave three reasons why rent control is a bad idea and is stopping the growth of building rental units in Ontario. I think it's very interesting that two of them have absolutely nothing to do with rent control. I find that's really kind of an ironic thing to hear at a committee hearing for rent control.

The second major comment I want to make is that I think this government is going to make a fatal mistake in changing rent control. The size of the rental population in the greater Metro Toronto area is enough to displace this government permanently, and I think this government had better take that into consideration before it makes any changes to this legislation. This type of legislation is a government killer, it affects so many people. I must warn this government to please refrain from changing this legislation as it's proposing to do within the bill that it's circulating.

I have some grave concerns about the bill. We're in an area that's quite an interesting thing here. We see the government wanting to allow landlords to raise the rent in between tenants pretty close to as much as they want. In real terms, if you continue to have rent control while you're a sitting tenant and once you've rented a unit but there's no way of regulating how much a person charges in between those two times, there is no such thing as rent control. That's a fraud when you get the majority of people moving every five years. That is not rent control, because what will happen is that you will get many people who will move from one unit to another and the unit will go up 20%, 30%.

We have another interesting issue here: How will the government know how much it goes up when the rent registry disappears? There is no way of tracking rents then, and once that registry is gone, just like many other things that the government has gotten rid of that will actually be able to educate and prove what the government is really doing, such as the Ministry of Community and Social Services library and many other different things, so no one can get any information any more out of government, it's really a travesty of justice here.

We've also got an issue of harassment. The government has decided to put an anti-harassment clause and

way of dealing with harassment within its paper. It's very interesting, but what I'm really afraid of is that it will not stop harassment because harassment is a difficult thing to prove in the context of a rental unit. Are you going to set up a video camera at the person's place and tape everything that goes on? Are you going to bug their phones to find out what is said on the telephone so you can prove what's happening?

What's going to end up happening here is that we're going to get lots of claims of harassment and absolutely no one is going to be guilty of it, because there's going to be no way of legally proving that there is harassment. If that's the case, then there's another phoney clause, as far as I'm concerned, and basically a fraud being perpetrated on the Ontario public. I think this government has to come to terms with those things. Those are not things that are going to be enforceable.

The appeal system: Any form of internal appeal is usually a whitewash. We've learned that through all kinds of other sources. For instance, I would suspect that other appeal boards like the Social Assistance Review Board are going to either be gutted or disbanded. I would suspect that any appeal board that is set up that is within the government's purview and run by government will be exactly the same.

We need the courts to deal with this situation, just the same as we have them today. In your document, you talk about how tenants have to hire a lawyer. Excuse me, but tenants have the crown, which is represented in the ministry, to represent them. There is no lawyer hired by a tenant. There is a lawyer hired by the landlord, but not by the tenant. The crown represents the tenant. So there's a little bit of misinformation within your document that I have some concerns about.

We've talked about in the document as well what will happen in care facilities. That has a special ring to me, because I was personally involved with the creation of Bill 120, which was to make sure that garbage bag evictions stopped and the abuse of seniors and persons with disabilities in care homes ended. I think it's incredibly important that the clauses that were brought in in Bill 120 are retained within any kind of legislation for tenant protection, because we, as a disabled community, as senior citizens' groups, will not stand any longer for things like garbage bag evictions. We will, as many times as we can, hit the front page of the paper with what's going on.

We have to be very tough and we have to remind your government that we who rent are the majority of citizens in this province, not a minority. We are not a special-interest group and we will not under any circumstance be called a special-interest group. If you want to protect landlords, then that is fine, but you will end up paying the consequences at the polls.

Mr Marchese: Mr Seiler, it is true to say that this government has taken the guts out of rent control as we have understood it. The problem is that they're trying to deceive the tenant by calling it a tenant protection package —

Mr Seiler: Absolutely.

Mr Marchese: — and trying to appease the landlord because they're not going far enough. As the previous

speaker mentioned, the elimination of rent control is a good step. They didn't say it in that way, but they see that as an important first step. The other steps come with what Mr Lampert suggests needs to be done, and that requires, as one of the previous landlord developers said, a red carpet. You know what that means.

Mr Seiler: No taxes, no nothing.

Mr Marchese: They don't call that intervention, but it's intervention to have rent control.

I agree with you about harassment being a very difficult thing to evaluate, to assess and to adjudicate on. As much as you might have an anti-harassment unit and all that, probably poorly staffed, in the end how do you prove it? It's going to be a terrible thing.

I've come to the conclusion that the courts are a better way to go, because ultimately tribunals end up being appointments by the government, and in this particular case I have no faith that neutrality is the order of the day. 1330

The previous person representing landlords talked about the fact that they don't get enough money for capital repairs and that's why the ceiling under the current legislation is simply not adequate. They've increased it by 1%. They will pass through now property taxes, if these ever becomes law, which would increase it to who knows what. What is your opinion about that particular part of the package?

Mr Seiler: I think that one of the largest problems is that there is absolutely no guarantee that I can also prove that any repairs have been done either. I think it's going to be very difficult for that to happen. Or landlords are going to be able to do very, very patchy repairs and then charge you as if it was a full repair. That's another thing that I very much worry about with the repair clause.

But the cost of repairs, for instance, in my own experience as a tenant, I have been charged more than what was allowed under the fixing of a unit for the replacement of a fridge that took three months to replace, and we had no fridge for three months. That type of scenario is actually not so uncommon. I find it actually kind of interesting. We hear in the Sun and in the many newspapers and television stations of the horror stories of the bad tenant, but we very rarely ever hear the stories of the bad landlord who hasn't fixed anything in 20 years and doesn't owe a cent on the property.

Mr David Tilson (Dufferin-Peel): Your comments with respect to process, sir — and you're right, there are situations where prosecutors proceed currently, it could be property standards bylaws, it could be that type of prosecution, but many of the incidents are for personal disputes between the landlord and the tenant. It may involve something that doesn't involve bylaws — collection of rents, arrears of rents, those sorts of things — and there have been facts given that the process is unduly long for both the tenant and the landlord to receive proper recourse, whether it be final inspections by property standards officers, processes through the courts which are adjourned, delays; it can go on for literally weeks. It has been put forward to the government, at least, that this process is not working. Having said that, it is believed that the status quo simply is adequate and that a new process through mediation, arbitration — and

I think the government is very flexible in the paper, as you can see, as to what sort of concept is being proposed.

Mr Seiler: I think that there's absolutely no problem with saying that there can be mediation, but to eliminate the court procedures completely and the ability for someone to go to court is the wrong way to go.

Mr Tilson: Would you have any problem with it being mandatory, that before you do any proceedings, there be some form of mediation between parties, and if you don't have mediation between parties, which is less expensive for everyone, including the state — that it be mandatory before any proceedings take place?

Mr Seiler: Just as long as it's mandatory afterwards that it automatically goes to a court if there's no settlement at mediation.

Mr Tilson: Okay. You made some comments with respect to the aging stock, and Ontario's housing stock is aging. The ministry gave evidence on the first day that over 60% of the housing stock is 25 years or more, that there have been small additions to the rental stock since the late 1970s, and they also have pointed out the obvious, major repairs linked to age, that older buildings require major investments, which again is obvious, whether it be for parking or balconies or that sort of thing.

My question to you is, how are these renovations going to take place? How is this restoration going to take place? Where's the money going to come from to do all these things?

Mr Seiler: It stands to reason if the building is 25 years old and the building has not been paid off after 25 years — or unless the building has been flipped back and forth from one landlord to another to raise the costs of the building, which is common, actually, because I know that is what happens in private rental units, in condominiums. Quite often they're flipped back and forth and every time they're flipped the rent goes up and the service usually goes down.

Mr Tilson: Except, ironically, even the non-profit buildings are starting to fall apart.

Mr Seiler: I think that has nothing to do with landlords. You are the landlord, if that's the case, sir, as the government of Ontario.

Mr Tilson: No, that's not true. A non-profit corporation is the landlord.

Mr Seiler: Or a non-profit that is run by government regulation. Well, then, maybe the non-profit —

Mr Tilson: No, that's not true either.

The Chair: Thank you, Mr Tilson. Mr Sergio.

Mr Mario Sergio (Yorkview): With this proposal the government is poised to eliminate totally the rent control system as we know it today. They have failed to provide us with any solid proposal on how to create new affordable units on the market. The minister himself has said that the removal of rent control will not spur new construction. What would be your recommendation to us to recommend to the minister?

Mr Seiler: To increase the stock?

Mr Sergio: Not only to increase, to start some new construction.

Mr Seiler: To increase and start. I think that one of the things is that we may be having to look at some

alternative ways of increasing stock in rental units such as renovating buildings that are being used as office towers, that have absolutely no use whatsoever because they've been sitting half-empty and three-quarters-empty since the end of the 1980s. We need to do an awful lot more things like that.

I don't think, unless we give the so-called "red carpet" treatment to builders, we are going to see any increase. So if we want to increase the stock, we're going to have to find alternatives other than those big builders building new apartment buildings for people to live in. Unless we do what the previous gentleman suggested were the real stumbling blocks for rental buildings being built, I don't think we'll see any rental buildings being built unless we give the builders absolutely every single thing that they want.

Mr Sergio: Such as?

Mr Seiler: Such as no taxes, no GST, no rules on how they can build a building; nothing. They don't want any kind of things that would make it difficult for them to run their business. So it is really and truly all business-related. It has nothing to do with the hundreds and hundreds of thousands of tenants in this province. It is only a business proposition.

Mr Sergio: Are you familiar with the ministry's announcement of yesterday?

Mr Seiler: With the ministry's announcement of yesterday of what?

Mr Sergio: With respect to some changes to the building code for new homes.

Mr Seiler: I have done a submission on the building code issue, and I was extremely critical of what was happening and the gutting of the building code.

Mr Sergio: One more question by my colleague. We share on this side.

The Chair: It better be a short one.

Mr Bernard Grandmaitre (Ottawa East): We'll share a very short one, Mr Chair. You heard the ministry saying that they wanted to get rid of the 84,000 social housing units in the province of Ontario and under, let's say, the private sector where people are enjoying low-income units at the present time. Do you think that by selling these 84,000 units the government will provide you with more adequate housing?

Mr Seiler: I certainly think they'll provide somebody with a more adequate income, but I'm not so sure that there'll be any more housing available. In fact, I would suspect that much of the housing that is in the locations that they're wanting to sell will be very quickly — the people will be evicted, the buildings will be torn down and huge condominium structures will be put up in their place.

The Chair: Thank you, Mr Seiler. We appreciate your attendance here this afternoon and your input.

1340

METRO NETWORK FOR SOCIAL JUSTICE

The Chair: The next presenter represents the Metro Network for Social Justice, Domenic Bellissimo. Good afternoon, sir.

Mr Domenic Bellissimo: Thank you, ladies and gentlemen, for allowing me to present this afternoon. My

name is Domenic Bellissimo. I've prepared a copy of my brief for each of you.

I'm a member of the steering committee of the Metro Network for Social Justice here in the Metro area. The Metro Network for Social Justice is a coalition of non-governmental organizations in Metro Toronto which share the common goal of a socially just and equitable society.

Founded in 1992, we're a non-partisan network affiliated with the Ontario Coalition for Social Justice. We currently have a membership of 187 organizations who have chosen to affiliate with us as the Metro network. Our members include social service organizations, faith and anti-poverty groups, labour and social planning bodies. Members range in size from small self-help community groups who receive no funding and are made up of a few dozen residents to large labour and community organizations with thousands of members. We can therefore say that our member groups represent tens of thousands of individuals who are collectively a part of the network. A great number of them are tenants in the greater Toronto area.

I wish to use my time today by making specific comments about the tenant legislation proposals and include a number of more general observations, if I might.

As a social justice network, we are obviously concerned about the issue of fairness. In our view, the proposals before us here do nothing to achieve equity in society and in fact will result in a further gap between those who own large properties and those of us who are tenants. In our opinion, fairness is not simply about striking an exact balance between the interests of wealthy property management companies and individual tenants. That would suggest that both of these groups in society have the same access to resources and power. I would venture to guess that no one in this room would agree that they have the same privilege or the same access in the province of Ontario.

Perhaps I might address a few specific concerns that appear in the proposals.

First, it appears to us that the government is planning to effectively end rent control in Ontario as we know it. We do not support these provisions as a network regardless of whether they'll take effect immediately or whether they'll take effect as tenants move from their current units or location. According to many of our members, about a quarter of tenants move for various reasons each year. Your own government studies that I've seen show that at least 70% of tenants move at least once in five years. It would appear to us that the real agenda is simply to raise the average rent for all tenants in Ontario. Each time someone vacates an apartment, the rent can be increased to whatever amount the marketplace will bear. We would like to ask, what about a person's ability to pay in this time of economic crisis when jobs are scarce and the jobs that are in Ontario seem to be paying less each year?

The second concern we have is that the proposals here will also raise the limit on rent increases. Landlords can currently apply for an extra 3% above the 2.8% that you've allowed this year. As a tenant, I would suggest that is more than a fair provision, given our current economic situation. As an education support staff myself,

I have not seen a 5.8% increase in my wages for 15 years. In fact, I've had a loss of 7% in earnings for each of the last three years and am in constant fear of losing my job due to education cutbacks. For capital repairs, rents will be allowed to be increased by up to 4% above the guideline and there will be no limit how high rents can be increased due to utilities or the anticipated actual value assessment, which we have no doubt will be coming and impacting on Metro very shortly. It could mean, therefore, that rent increases will be closer to 10% and that's certainly in violation of what law already exists of the 2.8% increase in the coming year.

Our third concern is that by the proposal to remove the rent registry, you're removing a fundamental right of tenants: the right to know the legal amount of rent on an apartment and what services have been allowed to be included within that rent. Under the new vacancy decontrol proposals, landlords will be free to discontinue services which were previously included in the rent. It would certainly be harder to monitor without a rent registry what services were included. While the vast majority of small landlords treat their tenants with respect — and we wish to stress that — in our opinion this action will strengthen the hand of that very small minority of large apartment landlords who may abuse this situation if they choose.

Our fourth concern of course is that by ending the Rental Housing Protection Act, more affordable rental homes will disappear from the Metro area, to be replaced by whatever type of building produces the highest return on investment. We, as a network, understand that the government hopes that some of these provisions will result in more rental housing. However, the reality of the high cost of developing and building rental housing in large cities, such as Toronto and others, will continue to mean that few new rental housing units will be built. We would suggest that the real problem has not been the Rent Control Act or the provisions in the past, but rather the artificially inflated prices during the so-called speculation boom a few years ago in Metro. This kind of marketplace phenomenon of treating housing as a commodity and the shift towards building luxury condominiums contributed greatly to our 1% and lower vacancy rate. It wasn't strictly due to the issue of having rent control.

Fifth, as a network, we would agree with the sentiment that the dispute mechanism in the Landlord and Tenant Act needs to be redesigned. It needs to be fine-tuned. We'd agree with that. If a tribunal system is to be put in place, and it's extremely vague in the proposals as they stand right now, those responsible for being decision-makers must not be chosen entirely from the business community or be political appointments by the elected government of the day. That certainly weakens, from government to government, the provisions that are put in place regarding tenants. The people must be knowledgeable, they must be neutral and they should also include tenants, as well as homeowners. To the best of my knowledge, we never ask whether someone is a tenant or a homeowner when they're dealing with issues of disputes between tenants and landlords.

In conclusion, let me sum up by urging you not to proceed with the proposals in this discussion paper. Coupled with the recent announcements about wanting to sell off public housing, the recent decisions to end construction of non-profit and co-op housing, we can only assume that tenants' fears in this province are well founded.

Whether in the area of housing, health care or education, we, as the Metro Network for Social Justice, believe that government has a fundamental role to play in protecting collective rights, not only individual property rights. The provisions in this legislation will add to a growing economic disparity between citizens in our communities. Overwhelmingly, these provisions will hurt the poor, by far, and recently arrived immigrants, who in many cases are often working at two jobs just to pay the existing rent they have now.

I've appreciated the opportunity to present these brief thoughts to the legislative committee. We hope that you will give them serious consideration when making your recommendations. Part of the democratic process in Ontario is not only welcoming input from people but making sure that input finds its way into the legislation at the end of the day.

If I might add on a personal note, I've been a tenant since 1980 myself. I've always chosen to rent from small landlords, three or four apartments or less, and have overwhelmingly had positive experiences with those landlords. It's been quite different from the situation that I've heard from friends who live in Parkdale or St James Town or some of the other areas that are very high density with a small concentration of landlords owning a tremendous amount of stock.

Presently, my family and I own a home that we rent out. We have two apartments and the existing tenant-landlord act, despite some of the drawbacks that I mention, and the rent control provisions have proven to be very effective for us as landlords. We've treated our tenants with respect. There have been very clear policies that we've chosen to follow, and I think tenants have benefited from that and so have we in realizing a return on the home that we bought a number of years ago.

Finally, I might want to make another suggestion that's been raised with me a couple of times by people and that is, why not have or initiate a bill of rights for tenants? There are some provisions in the existing legislations that give tenants fundamental rights. Why not enshrine those in the province of Ontario? After all, this is the kind of Ontario that we want to live in, that has an income disparity that is not approaching that of the inner-city, large, urban areas in the United States, where I've travelled a great deal.

1350

Mr Bruce Smith (Middlesex): Thank you for your presentation. I'm certainly pleased to hear that you've had very positive experiences from a tenant's perspective yourself. By your own admission there are areas for improvement from an owner's perspective.

I want to pose a question to you, because ministry officials have told us that a substantial portion of the rents are now at market rate and in their advice, if I could share these statistics with you and perhaps get a

comment on them, they've indicated to us that over 50% of all private rental units in the province are being charged less than their legal maximum rate. Secondly, furthermore, about 30% of all the rental units are being charged at least \$60 per month less than their legal maximum rent.

From my perspective it seems that landlords have already had the opportunity to raise their rents but they haven't actually done so. Why would you see any difference occurring under our proposed system, and perhaps why would that have occurred? If I could get your thoughts on those ministry statistics, I'd certainly appreciate it.

Mr Bellissimo: I can only speculate. I think probably part of the factors have been that landlords have not been able to rent apartments given the economic crisis in the province: the lack of jobs, the number of people who I work with in the professional sector who have lost their jobs. Middle managers, who in the past were earning \$60,000 and \$70,000 and were able to rent very decent apartments, are not able to rent those accommodations any more. So I think that might be part of the economic reality.

If less than 50% of the apartments are under the market rate, certainly the solution to raise those rents for landlords is not to eliminate rent controls completely. It perhaps could be to make a change in the amount that you're allowed to raise the rent. Go to 3%, go to 4%, with the proviso that there are going to be caps. If you remove rent control completely, it would seem to me that you're going to have a wildly speculative process that begins where, in an apartment building, a unit that's vacated twice would see that rent rise twice, while the next door neighbour's rent would be grossly different. I could see that that's going to create a tremendous amount of tension between tenants living in the same building and between some tenants and their landlords.

Mr Ernie Hardeman (Oxford): Thank you for the presentation. I want to assure you that we are holding these hearings to hear from the public and to have that implemented into legislation, recognizing that we hear very diverse opinions on what needs to be done. So it's going to be very difficult to come up with something that would incorporate all the recommendations made.

One that I wanted to question on was that you referred in your presentation to assessment and the new proposals on actual value assessment. I wanted to hear your comment on the present system where two identical buildings, one being owner-occupied and one being tenant-occupied — because one is considered commercial and the other is considered residential, the municipality can collect some 400% in Metro taxes, I believe, on the rental accommodations. Obviously, as a tenant, you would see it as a problem, but as the homeowner that has rental units that are considered residential, do you think the answer is to even that out, that the other residential properties should pick up the difference between those two and have equalization of the tax factors?

Mr Bellissimo: I think the one thing that all of us would agree on is that the property tax system in the Metro area is broken and it needs to be reformed. I don't think there'd be any disagreement around that. Living in

different areas of Metro, you pay vastly different property taxes and it's reflected in your rent.

The solution, though, I think is to try and look at people's ability to pay as well as simply raising everyone's rent to a level that was already in some cases quite high, and I think quite high because of housing booms, quite high because of development being concentrated in specific areas of Metro. Any kind of levelling out of property taxes to make them more fair or equitable across the cities and boroughs needs to be done by keeping in mind the kind of provisions that have caps on how much of an increase there's going to be. It needs to keep in mind people's ability to pay, certainly some of what I heard from Mr Crombie the other night about seniors not being forced out of their homes. It doesn't only impact on seniors. It impacts on a lot of working people who have recently been affected by the economy.

A number of years ago the Fair Tax Commission came up with some terrific recommendations that could help level out and make more fair the property tax in Metro Toronto. One of the recommendations is that we do need education on that.

The Chair: We do need to go on to —

Mr Bellissimo: I'm sorry.

The Chair: We're cutting into Mr Curling's time and he gets very upset when we do that. Mr Grandmaître.

Mr Grandmaître: I want to keep on with the actual value assessment, this new proposed assessment program that Mr Leach is endorsing — I think. We don't know yet. We haven't seen any impact study, but it seems like Mr Leach is endorsing this kind of new assessment program.

A previous presenter pointed out that one of the reasons why rental units are not being built today is that 25% of municipal taxes are accorded to a unit. Let's say you have four units, so 25%, 25%, 25%, 25%. We don't know the impact of AVA, only what we read in the newspapers. According to these newspaper articles, they're saying that there might be a 40% shift between commercial and residential assessment. If this shift takes place, those taxes will go up; the residential taxes will go up. How can this government afford to build more units if municipal taxes will go up? Do you believe that the government can do both: abolish rent control and implement AVA?

Mr Bellissimo: No, certainly not. I think you'd end up having just a disastrous situation where people would be forced out of their apartments. There would be a lot of vacant apartments because people couldn't afford to pay the increases. I think it would be even more disastrous than the situation that currently exists right now.

I think though that people are desperately being convinced that there's something tremendously wrong with rent control in the province, and I'm not sure that's the situation. When I see statistics in your legislation proposals being given only by one organization, the Fair Rental Policy Organization, which to my knowledge speaks more on behalf of landlords than it does of tenants, then I would suggest that there is an agenda at work, and it's not one that favours tenants.

Mr Curling: Mr Smith was just about answering our question very well, that the landlords are strapped at not

getting adequate rent for their property. Since the maximum rent is there and they're not charging it, don't you think that is an area? They could raise their rent and then start making some investment on their capital by fixing the buildings? Don't you think that is there?

Mr Bellissimo: Sure.

Mr Curling: Would you agree with me that the answer is not rent control that is causing people not to build?

Mr Bellissimo: Of course not. I don't think rent control is the issue at all.

Mr Marchese: Mr Bellissimo, just a few quick comments, and a question if I can throw it in.

First of all, with respect to the bill of rights for tenants, don't bet on it from this government. They're tearing the guts out of rent control. This is not the government that would introduce a bill of rights for tenants.

Secondly, your point about the rent registry: It was a basic protection for the tenant. They're taking that out. What that means is they're attacking the tenants. Indirectly, by not protecting them through a rent registry, they're attacking them.

The Rental Housing Protection Act: You're not the only one who has said this. More affordable rental homes will disappear. Richard Fink, a lawyer who has appeared before this committee, who's done work for the last 20 years, has seen the loss of many rental buildings, and he said, "When this goes, you can see a greater loss of rental buildings," and that's reiterated by many.

I agree with your statement that government has a fundamental role to play in protecting collective rights and not only individual property rights. This government disagrees with you. They think you're a socialist or worse — who knows what? They know I'm a socialist, so it's okay, but for the rest of you who say these things it's really bad. I thought I'd let you know this.

The question I wanted to put to you is, the increase under the current system will go up from 5.8% to 6.8% now, plus the pass-through of taxes and hydro and who knows what other user fees, items like the charging of garbage fees and so on that might be passed through as well, some person commented. One of the members across said in a question, "Units declined since rent control, and since government decided to compete with the private sector we've seen the loss of units." Can you just comment on that as a remark?

Mr Bellissimo: I don't see the two things as having a correlation at all. I think the government, in providing public or social housing or money available for cooperative housing, is a benefit and a long-term investment for society. The reason rental units have disappeared is that there had been a boom in luxury condominiums, conversions to lofts, other kinds of commercial ventures, that gave a higher return on investment. From what I see recently in the business pages of the newspapers, the simple fact that this legislation is being proposed as it is has meant that housing stock and apartment buildings are being seen as a very profitable business to get into. I hear that there's quite a boom in people wanting to invest capital in rental accommodations, and that must be because there's a number of people in society wanting to make a huge profit from this vast increase in rents, rent

control being removed and other benefits that would accrue to that small group in society.

The Chair: Thank you, sir. We appreciate your attendance here today and your input into our process.

1400

METRO COALITION OF HOUSING HELP

The Chair: Our next presenter is from the Metro Coalition of Housing Help. Welcome.

Mr John Bagnall: I would like to begin by expressing our appreciation for this opportunity to address the standing committee on general government. Our coalition represents housing help centres that provide housing registry and housing information services in Metro Toronto. Each of us provides a range of housing help services in the respective area we serve. These services include operating housing and home-sharing registries, doing housing counselling, providing information and referral, doing crisis intervention, providing landlord and tenant education and support, assisting with housing applications and other documentation, and doing informal mediation and negotiation involving landlords and tenants.

The large majority of people who contact us to get help in locating housing are in low-income situations and are in urgent need of finding housing. They include low-income families, single people and seniors, homeless and near-homeless people, women who are victims of family violence, people discharged from institutions such as hospitals, people such as the physically handicapped who require special-needs housing, newcomers who experience barriers as a result of factors such as language or race.

Our aim is to help people find or maintain their housing and to prevent or reduce the human and economic cost of homelessness and institutionalization. The principal way through which we provide assistance to housing seekers is through our listings of private market housing vacancies, including both apartments and other self-contained housing listings and home-sharing listings. Through the operation of our housing registries, we work on a regular basis with a variety of landlords, ranging from small landlords renting a room or a single apartment to landlords of medium-sized and large buildings. In this respect, we consider both landlords and housing seekers to be our regular clients.

Our primary interest with regard to the consultation paper, the New Directions paper, is in respect to the section that deals with landlord-tenant dispute resolution, and specifically our interest is in regard to the mention that is made in that section that consideration is being given to the role of front-line mediation as a way of resolving disputes between landlords and tenants prior to formal adjudication. That is mentioned on page 9 in the first paragraph of the consultation paper.

We would like to indicate that based on our experience as housing help centres, we believe that front-line mediation, or informal mediation as we sometimes refer to it, can definitely play an effective role in dealing with landlord-tenant conflicts. This type of mediation in fact is something that has been practised at housing help centres in order to deal with landlord-tenant disputes for a considerable time now. The primary elements of

informal mediation, as we understand it, involve a four-step process in which the mediator works both with the landlord and the tenant.

In the first step of this process, the mediator facilitates communication between the two parties regarding their respective situations. In the second step, the mediator facilitates the exchange of information between the parties in regard to their respective problems and expectations. In the third step, the mediator helps the two parties to search for and to negotiate a solution. In the fourth step, this solution is expressed in an agreement between the parties.

This type of mediation is based on the free consent of the parties. It requires that both parties be informed of some basic principles in advance. These principles include, firstly, the goals, the nature and the conditions of the mediation process; secondly, the stages and procedures of mediation; and thirdly, the voluntary nature of the process that provides for the right of either party to withdraw from the process. So it's based on a voluntary consent of the parties.

We would envision that informal mediation could be a logical element that would fit well within a wider system of landlord-tenant dispute resolution. We would envision the possibility of a system that would have a continuum of dispute resolution services that would include both formal and informal dispute resolution. Two-way referrals between services providing informal mediation on the one hand and those providing formal dispute resolution on the other could ensure that simpler cases would be routed off and handled through informal mediation, thereby reducing the burden on the formal dispute resolution service and providing a more cost-effective service.

At the same time, we know from our own work as help centres that informal mediation has a useful role to play in reducing the financial and human costs that can result from unresolved landlord-tenant conflicts, especially in areas such as Metro Toronto where the vacancy rate is low. This type of mediation can provide a means through which landlords and tenants who are in conflict may in some cases be able to work out their differences in a way that avoids societal costs of an eviction. This is not to say that informal mediation can save all tenancies or that all tenancies necessarily should be saved. Clearly some cannot be saved. Some are not economically viable.

Moreover, some landlord-tenant disputes simply cannot and should not be resolved through a process that rests, as does informal mediation, on a voluntary basis in cases where one party or the other party is clearly not going to meet its obligations or is not respecting the rights of the other party to dispute needs to be dealt with through a formal dispute resolution procedure which provides appropriate safeguards against abuses.

Nevertheless, we can say that based on our experience as help centres, through informal mediation it has been possible to facilitate landlords and tenants in finding solutions to problems that otherwise definitely would have resulted in evictions. Through these interventions, it has been possible to avoid an outcome that would have been very costly both to the landlord and probably have resulted in the tenant being required to go to a shelter.

In conclusion, we view front-line or informal mediation as a method of dealing with landlord-tenant conflicts that has been tested by experience, that is cost-effective, and that can help to reduce the human and financial costs of these conflicts. We welcome the fact that the ministry is giving consideration to this type of mediation in its planning and we would like to indicate our support for recognizing this type of mediation as a significant element of an effective and efficient system for landlord-tenant dispute resolution.

1410

Mr Sergio: Thank you very much for your presentation. I have a couple of questions with respect to rent control, which you said very little about, by the way. First, how do you feel about the total elimination of rent control? Second, the Minister of Municipal Affairs and Housing, Mr Leach, has said on various occasions that all the assisted housing now within the jurisdiction of the provincial government, the old Ontario Housing, as it becomes available on the market will be refitted and sold to private people. How do you feel with respect to the removal of rent control and the sale of the assisted housing within the jurisdiction of the Ontario government?

Mr Bagnall: I guess you could appreciate that basically our group as a coalition has specifically identified this area within the proposals, dispute resolution matters, where we have gotten together and discussed and come to conclusions and been able to present our views, with the idea that we've got experience in this area, that we're familiar with this area and that we think we could advance the discussion in this area in an effective way. We have not gotten together to give ourselves a mandate to discuss these other points in terms of the matters you raise. Basically, I don't have a specific response to that in terms of what you're raising in those specific areas. Basically, as a group we are talking to an area where we have experience and can, we think, make a contribution in terms of advancing the discussion. So I can't respond in a specific way.

I can say that from our impression in terms of the general thrust of the changes that are being proposed by the government, we expect that the kind of mediation we're talking about is going to be needed in an increasing way, that there's going to be increasing need for the kind of mediation we have talked about in our proposal, but that would be as much as I could go into in terms of that.

Mr Sergio: But when the controls are lifted from a unit and another tenant has to move into that unit at the maximum price the market may bear, what negotiation is there for the tenant? Either he pays whatever the landlord wants or he won't get that unit. At what point or where would the negotiations come in?

Mr Bagnall: In terms of our experience, there is a discretion in terms of what the landlord can do in a particular case. Again, the issues around which mediation arise can vary a lot, as you know. It could be issues that relate to a variety of factors in terms of the relationship between a landlord and tenant. It could be in relation to privacy, in respect of privacy of the tenant. It could be something in relation to —

Mr Sergio: That's with disputes which —

The Chair: Thank you, Mr Sergio. Mr Marchese.

Mr Marchese: I support generally mediation as a step to dealing with the problems tenants and landlords might have, and that's some of the work you're obviously doing. Can I ask you, have you been getting government support in the past?

Mr Bagnall: Yes, our program has.

Mr Marchese: Has this government continued with the support?

Mr Bagnall: Yes, it has.

Mr Marchese: You haven't commented at all about — or maybe I missed it — a tribunal and/or the courts and which of the two you think might be more appropriate in terms of dealing with disputes. Do you have an opinion on that?

Mr Bagnall: No, we don't have an opinion as to whether — I think it's going to depend on a number of variables. We have not ourselves discussed and resolved in terms of which direction we would advise to go.

Mr Dave Boushy (Sarnia): The reason I'm interested in asking these questions is I have a similar organization coming and seeing me next week and I'd be very much interested to compare your ideas with theirs. The first question is, how many people did you deal with in 1995 or 1996? Within a year, how many people would you deal with?

Mr Bagnall: We serve large volumes of people. Our number of calls would be well over 2,000 in a year.

Mr Boushy: Two thousand per year?

Mr Bagnall: Yes.

Mr Boushy: What is your budget?

Mr Bagnall: Each help centre is a separate entity. I'm from Etobicoke Housing Help Centre. Our budget I believe is \$110,000.

Mr Boushy: So for \$110,000 you served 2,000 people. Am I correct?

Mr Bagnall: Yes. I'm speaking off the top of my head in terms of the numbers.

Mr Boushy: And the \$110,000 comes from the provincial government, funded totally?

Mr Bagnall: Yes, we're funded under the Ministry of Municipal Affairs and Housing.

Mr Smith: Thank you for your presentation as well. We heard a similar presentation yesterday which essentially endorsed a negotiation or mediation process in the front end of the system and an adjudication process being retained at the back end. As an individual who has been involved in help centres, I was interested if perhaps you could quickly give us an overview of what your intake process might be and the time frames you're experiencing in terms of mediating disputes or what you might envision those time frames could be.

Mr Bagnall: It can vary considerably. A lot of our mediation would take place in regard to landlords who were previously listed with us, who are familiar with our service, whom we've worked with before. It can work very quickly if we get a call from a landlord indicating that they're having a problem in regard to their relationship with their tenant. Then we can respond immediately in terms of contacting both parties and finding out the substance of the issue and what perspectives each has in terms of their situation and their needs and their expectations. Then basically, if the agreement is something that

obviously can be solved quickly, then we can move on it right away. It can be very quick in terms of the operation.

Mrs Lillian Ross (Hamilton West): I think it was an excellent presentation. Do you think that dispute resolution mediation should be mandatory at the first step, between the landlord and tenant?

Mr Bagnall: We would certainly say we would like to see a thing that would encourage both the landlords and tenants to reduce conflict, which would be through that; it would be the obvious way of doing that. Conflict is costly. If you can stem it at an early point, then you can reduce these long-term costs, these social and financial costs. So, absolutely, we would support a process that would require the earliest possible intervention in terms of dealing with possible conflicts.

The Chair: Thank you, Mr Bagnall. We appreciate your attendance here today and your input into our process.

REGIONAL MUNICIPALITY OF PEEL

The Chair: Our next presenters are from the regional municipality of Peel: Roger Maloney, commissioner of housing; Pierre Klein, regional councillor; and Terry Kingsmill, a policy analyst. Welcome, gentlemen.

Mr Pierre Klein: Thank you very much, Mr Chairman, and standing committee members. My name is Pierre Klein. I'm the regional councillor for the regional municipality of Peel. I also sit as a local councillor on Caledon council and I serve as the chair of housing for the region of Peel. With me today is Roger Maloney, the commissioner of housing for the region of Peel and general manager of Peel Living, which is our non-profit municipal housing corporation. Terry Kingsmill is our policy analyst, as you've noted. Roger and I will share our presentation and we will then be pleased to answer any questions.

First off I'd like to thank you for allowing the region of Peel to appear before you and comment on the matters that are before the committee. We believe that the region of Peel is able to offer its comments from a very unique perspective, both geographically and historically as a municipal government and as the largest landlord in the region of Peel.

The region of Peel comprises the area municipalities of Brampton, Mississauga and the town of Caledon. It includes an array of natural environments, rural areas, small settlement communities and everything up to extremely urbanized neighbourhoods. Peel has very old, mature communities in some areas and is experiencing explosive growth in other parts of the region. Overall, our population has grown at a rate of 20,000 to 25,000 people per year, and we expect that rate to continue for the foreseeable future. Our demographic patterns are shifting, as they are in other municipalities, with a population which is gradually becoming older and more non-family-oriented, but in conjunction with our growth all types of circumstances and needs are on the rise. Rental housing requirements and prospects vary enormously across our vast region.

Peel regional council was probably the first, back in 1985, to say anything formally about rent controls. Our

council has steadfastly maintained its opposition to rent controls since 1985, which I suspect makes us a very rare bird in municipal governments. We also advocated for targeted shelter allowances in 1985 and have done so repeatedly since then, reflecting a unique municipal track record.

1420

The region of Peel was one of the first municipalities in Ontario to create its own housing company, Peel Living, which is now 20 years old. Peel Living is one of the largest non-profit housing corporations in the province and is the largest landlord in the region of Peel. Peel Living's waiting list is over 13,000 families. That's approximately 30,000 people. This is the second-largest waiting list in the province of Ontario, second only to the Ontario Housing Corp list covering all of Metro Toronto. Peel Living's board of directors consists of 18 of the 22 members of regional council, and this is very indicative of the high level of interest and concern for housing needs that we as regional councillors have.

The philosophy of the regional council has always been that it is the role of the private sector to serve the vast majority of housing needs. Participation in Peel Living reflects the commitment by the region to meeting needs which cannot or are not being met by the private sector. Peel Living has an excellent working relationship with the private sector and with the non-profit sector. We work hand in hand, for instance, with the local social planning council and with the Fair Rental Policy Organization of Ontario.

Peel Living has extensive experience in the worlds of development and property management, and we have been trying to find ways to create housing without the usual non-profit subsidies. This brings a practical understanding to the matters that are now before your committee. We have some unique credentials. The time constraints, unfortunately, through this consultation process did not permit us to make and develop detailed positions on each and every piece of the proposed New Directions. But because of our experience and leadership in this area we have thought through many of the relevant issues, and Peel agrees with the implied message of this whole legislative package, namely, that the best tenant protection is an adequate supply of decent housing. We also agree that the current situation is not encouraging that supply.

The proposals put forward in the New Directions for Discussion generally move in the right direction, but I must say there is a very serious flaw, and that lies in its very limited focus. Unless the Legislature is able to deal with the whole gamut of housing policies, New Directions will do very little to assist supply, and the legislative changes alone to rent controls could do much more harm than good.

At this point I ask Roger Maloney, commissioner of housing, to speak to specific aspects of the legislation.

Mr Roger Maloney: On the subject of rent controls specifically, the region of Peel has called for the phasing out of controls to encourage the private sector to produce rental housing. We recognize that private sector rental housing has been hampered by the continuing economic viability gap between what it costs to construct and

operate rental units and what tenants, especially those on fixed incomes, can afford to pay. That gap will not be addressed by rent controls in the absence of other supply initiatives and in the introduction of a shelter allowance program. From our perspective, we see that a balanced program is needed.

We would definitely encourage the province to go further with rent controls than proposed. A clear signal should be sent out that rent controls will be completely eliminated, but this elimination must be tied into a planned and rational way to remove the other impediments to rental housing development and also supply an income assistance program for tenants whose situations will worsen when controls come off.

With regard to the Landlord and Tenant Act itself, the region of Peel, in consultation with several other parties, developed a series of recommendations for reform. These recommendations were put forward to the Ministry of Municipal Affairs and Housing this past spring. A copy of that report is being circulated to you today, I believe.

The region supports the streamlining of the landlord and tenant legislation to encourage private investment in rental housing and to reduce the lengthy and cumbersome delays in the current legislation. That said, the region of Peel believes that thoughtful, not radical, modifications to the existing legislation and processes will best protect tenant rights and due process of law.

To this end we've offered many detailed recommendations in that report. I'll just note a few of them. We've talked about general set-asides, set-asides of judges' judgements, damage applications, abatement of rent, discretionary powers of a judge, the role of the registrar, and misrepresentation of income in public housing, to mention a few. A lot of those things come from our knowledge of the Landlord and Tenant Act by the fact that we manage 5,600 units.

As for the dispute resolution system under the Landlord and Tenant Act, although New Directions appears to favour some form of adjudication or arbitration model, the region of Peel believes its position is an effective alternative. We're saying as a region that we support modifications to the existing court processes, leaving the court process system itself intact. Increased powers to registrars would result in the majority of cases not being presented to a judge, thereby eliminating an unnecessary bottleneck in the courts.

The region believes that inherent in the current judicial process associated with administration of the Landlord and Tenant Act are many delays due to a lack of knowledge of the process by both parties, deliberate attempts to postpone cases, and many avenues of appeal. We would cite the Small Claims Court procedure as in itself offering several ideas for improvements in terms of all evidence being disclosed up front and limited opportunities to delay proceedings.

The judicial process associated with the administration of the Landlord and Tenant Act should be amended to provide full evidence disclosure in advance of any hearing before a registrar or a judge. Mediation efforts at the registrar stage should be initiated to trim overall court administration costs and to promote speedier resolution of landlord-tenant conflict.

In our view, the imposition of an entirely new adjudication system across the entire province would be problematic. However, if the province is set to follow this path, pilot projects should be used to work out the bugs. The region of Peel has offered itself as a candidate for such a pilot project, if that's the direction that's decided upon.

On the matter of conversions, the region has maintained a very firm policy. Although the region has no objection to the overall goal of the Rental Housing Protection Act, which is to preserve existing rental stock, the region has maintained its concern that the act itself was not the most appropriate mechanism of achieving this goal.

Although the region supports the repeal of the act, it would appear that suggested reforms will throw the baby out with the bathwater. There's no notion of protecting rental stock. There's no provision for municipal approval for demolitions, major renovations or conversion of rental buildings. The region of Peel maintains that approval authority for condominium conversions should be delegated to the regional municipalities. Approval would be based on sensible criteria: retaining the original objective of the Rental Housing Protection Act while removing the barriers that many building owners see as a negative in terms of improving the quality of their buildings.

With the announcement of the tenant protection package of reforms, the development industry went on record saying that the removal of rent controls alone was not sufficient to make production of rental housing an attractive investment. In fact, we are concerned, in Peel, that the tightening of already low vacancy rates will trap or discourage many tenants from moving, especially from affordable or chronically depressed older stock, in the absence of other assistance. We're also concerned about the impact on seniors, single-parent families and all those on fixed incomes in the absence of expanded supply.

Rental reports done in Peel by private appraisers have indicated that the removal of controls will result in pressure on rents unless supply is otherwise increased. Reports from conservatively minded economists cited favourably by this government tend to support the region's position of a balanced provincial housing policy. For instance, Lawrence Smith views special-needs housing — housing for people who are disabled, mentally ill, homeless or people with large families that have low incomes — as not likely to be forthcoming in the private sector without substantial subsidies.

Mr Smith, in his paper entitled Ontario Housing Policy: The Unlearned Lessons, states quite clearly, "A non-profit program dedicated to these groups would be appropriate."

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Likewise, I would cite a 1990 study done for the greater Vancouver area by Clayton and Associates that called on senior levels of government to step in with the production of newly built affordable rental housing or income supplements to meet rental housing needs not being met by the private sector, this in a province which eliminated rent controls in 1983.

In conclusion, committee members, Peel regional council supports the general directions proposed before

you, and in many ways we think you should go further. But the province cannot just walk away from its responsibility for the housing needs of the most vulnerable people in our society. Legislation should proceed as part of a balanced strategy which removes financial and regulatory impediments to the private sector production of rental housing and which provides income and supply programs aimed at those who are unable to compete.

At this point, that concludes our presentation here. Pierre and I and Terry would be pleased to answer any questions you may have.

Mr Marchese: Thank you for your submission. It sounds to me that in Peel you are Conservatives with a soul at least, and that's better than what we get from this current government.

Some of the members on the other side have said that units have declined since rent control, and they also say they've declined since government has decided to compete with the private sector. You've been building, and many municipalities have also been building, recognizing what you've said — that there is a need for that low-income person and that if you weren't building, it probably wouldn't be built. What do you say to them when they say units have declined since rental control, but particularly the other part, and since government has decided to compete with the private sector in building non-profit and presumably cooperative housing?

Mr Klein: I would suggest to you that the reason we have been massively building non-profit housing is because of rent controls. It's because the private sector has not been providing rental accommodation within a vast region of Peel that's growing rapidly. That's the reason we're so much in the non-profit. If there would be enough supply, we wouldn't have to build as much. There's still a role for non-profit.

Mr Marchese: Even Mr Leach says that the removal of rent controls is not sufficient to get the market going.

Mr Klein: Oh, I agree.

Mr Marchese: Even he admits that it's a problem, and he learned that obviously through a report that Mr Lampert did, because in his previous remarks he thought, "Eliminate rent control and they're going to start building." What are you going to put on that red carpet to get the private sector to build? What are you going to put on that carpet?

Mr Klein: There are a number of aspects that we've alluded to. One is that there have to be changes in the way assessment is done for multiple units versus somebody who owns a home.

Mr Marchese: That's one. Is that enough?

Mr Klein: That's one. That's not enough.

Mr Marchese: What else?

Mr Klein: Rent control has to be phased out.

Mr Marchese: You told us that. What else?

Mr Klein: I told you about that. There are GST implications, which are at a federal level.

Mr Marchese: That's a big help to them.

Mr Klein: There is capital tax on new rental buildings at the provincial level.

Mr Marchese: A big help. Okay.

Mr Klein: On our side of things, it's lot levies and the cost per unit. That's our responsibility. Those are a

number of aspects. We've been working, and I've been discussing, with the largest land owners in Peel in the rental business about ways in which we can try and make some of these changes, but it's going to be a large task. It cannot just be focused on rent control alone; it won't work.

Mr Marchese: We agree and Mr Leach agrees with that too. So my argument is, why remove rent controls if that's not the issue? Because that isn't the issue. In my view, that's not what the landlord wants. The landlord says that's good, because he wants to maximize his profit as much as he can, but for him to build he says, "I want that security, true, but I want all these other things. I want you provincial governments to intervene by cutting taxes, cutting development charges, equalizing property taxes, having the GST" — isn't that a big giveaway by governments to the private sector?

Mr Klein: Sir, I would suggest that you look at what the province was like before the need for rent controls. Rent controls should have been a short-term resolution to a very difficult situation in the province. We have to get ourselves to a position where there is a balance in the system again, and that means looking at the entire spectrum: those issues that you have also raised, but also the issue of rent control.

Mr Marchese: Mr Klein, the tenants are not on your side on this. They disagree with you completely.

Mr Maves: Thank you, gentlemen, for an excellent presentation. On the front page you talk about the number of folks in Peel who are on a waiting list. On page 2 you talk about a shelter allowance program. You're suggesting that the two are related, that if there's a shelter allowance program people would be allowed to move wherever they want and there would be less of a need for you to construct more housing, a lower waiting list?

Mr Maloney: Certainly. That's definitely true. Our position has always been that there's no way we can house the 13,000 households on our waiting list, which is 30,000 people. We're only a small player. The reason we became a big landlord was the private sector wasn't building and we took advantage of the programs.

From our perspective, there are a lot of units in Peel that are private sector now where rent supplements could take place. We think it's important to provide those individuals on our waiting lists with other options because we're saying to people, "We're not going to house you in the next 10 years if someone new is coming in the door because we don't have much turnover and we're not building. We're not really a solution for you, unfortunately."

That's what we think is needed, some sort of a shelter allowance program, to complement what the private sector will hopefully do, with us coming in to pick up on the end of special-needs persons, whom the private sector doesn't want to house, those type of persons.

Mr Maves: If we were bringing in a shelter subsidy program where subsidy followed the person instead of the unit, would that be another thing, along with the removal of rent controls, that you think would be a step along the way to increasing supply?

Mr Maloney: Yes, that's certainly another avenue we would support.

Mr Klein: It's a step, but we have to emphasize that there is a broad base of legislative changes that have to occur on all three levels of government in regard to housing. It's not just a one-stop solution or a two-stop solution. We have to look at all the impediments and things that have changed in this province since the need for rent controls.

Mr Curling: Your presentation provoked a lot of thoughts. As a matter of fact, all three of us here are anxious to get to you to ask you some of these questions. One minute you're saying that we must have non-profit housing, of which you are a great contributor. Then you say you're in it because of rent control. Let me tell you: The private sector will never build at the lower end. It wouldn't matter if we gave them all the red carpet. They would be at the top end. Then you came in of course as government, and it's your responsibility, the responsibility of all of us, to provide decent, affordable and safe housing for all the people, especially at the lower end of the market. We have to be there. This government is selling off all the non-profit housing to the private sector.

Mr Klein: We're willing to buy.

Mr Curling: You may have to build more non-profit. You're telling me now that shelter allowance will do that. As soon as the individuals move out of their homes, the rents are going to go up. Would you require more shelter allowance at the time then, to accommodate those people and those new skyrocketing rents that will go up at that time? Do you predict there would be more shelter allowance?

Mr Klein: It's a broad base of problems that have to be solved. We can't just say that shelter allowances are going to be the only thing that's going to solve it or rent control removal is the only thing that's going to solve it. It's not going to be that simple. The reason we have so much housing stock in the region of Peel is because we grew at a time when rent controls came in and therefore we started to fill a void greater than we think we should have filled in terms of meeting just the needs of those the private sector would not build for.

Mr Grandmaître: You've been very successful. Would you say that you're better managers than the government?

Mr Klein: Definitely. No question.

Mr Grandmaître: And you'd be interested in buying 84,000 or whatever number of units that are up for sale?

Mr Klein: We're interested in taking over.

Mr Grandmaître: You're willing to buy them and manage them and you would make a profit? Is that what you're telling us?

Mr Maloney: No, I don't think we're saying we're willing to buy them, because we don't have that kind of money.

Mr Grandmaître: Well, that's what your friend said. He's willing.

Mr Klein: We'll take over.

Mr Maloney: What we have said is that there is a local housing authority in Peel and we have already put forward a report saying it doesn't make sense to have two housing agencies in one municipality. The two should be amalgamated, even if we manage the asset. In terms of our being good managers, we think we're one of the top

managers in Ontario. We've proven that with our track record.

Mr Grandmaître: Are you making a profit at the present time or breaking even?

Mr Klein: We lost \$800 last year — breaking even.

Mr Grandmaître: Great management.

The Chair: Thank you very much, gentlemen. We've enjoyed your presentation and we appreciate your involvement in our process.

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MUNICIPALITY OF METROPOLITAN TORONTO

The Chair: Our next presenters are from Metro Toronto, Alan Tonks, the chair, and Shirley Hoy, the commissioner of community services. Welcome to our committee.

Mr Alan Tonks: Good afternoon. It's good to see you all struggling through this summer trying to wrestle this particular issue to the ground. My empathy is certainly with you.

As chairman of Metro, I am here on council's behalf, along with Shirley Hoy, the commissioner of social services, and Lynn Morrow, who is from my office, to bring you Metro's position on the proposed tenant protection legislation. I really do appreciate the opportunity to enter into a dialogue with you on the issue. My remarks this afternoon will highlight our major concerns. I also have with me a written submission that goes into more specific detail, of which I believe you'll be given a copy.

Metro recognizes the provincial government's desire to balance the concerns of landlords and tenants to arrive at a system that protects tenants, yet also provides the right conditions to ensure investment in maintenance and, hopefully, new construction.

Metro is also concerned with the impact of public decisions on both quality of life and economic vitality in our community, because most certainly the quality of the housing stock is a direct factor in influencing quality of life. I will focus on three areas that must be foremost for any government that has these concerns also: availability of housing; affordability and security of housing; and finally, maintaining stable, prosperous communities.

Before saying more about these, let me set the context by outlining for you why rental issues are so important for us in Metropolitan Toronto. The reasons have to do with the prevalence of renting, the tight markets and the rapid social change which is occurring within Metro's boundaries.

Province-wide, rental housing affects 36% of Ontario households, but in Metro rental housing is a much bigger part of the overall picture. For example, Metro is home to one third of Ontario's tenant households; that's 450,000 tenant households. Fully 52% of Metro's households rent their home. Metro is a community with higher housing costs, more low-income households and more rental affordability problems than elsewhere in Ontario.

Most people would agree on the importance of housing affordability. We don't want young families to have to give up hope of buying a home, as many did in the 1980s, nor do we want tenant families to be able to afford only shabby or overcrowded apartments.

In Metro, affordability problems are common among low-income tenants. One third of Metro tenant households have low incomes, under about \$23,000 — one third. They cannot easily afford even rents for inexpensive, small units. Metro, in 1991, had about 62,000 low-income tenant households paying over half of their income on rent. More broadly, about half of Metro tenants could not reasonably afford rents higher than today's averages. Metro, in 1991, had 140,000 tenant households with low to moderate income paying over 30% of their income on rent.

Let us be clear that the private rental stock is the main issue in rental affordability. Only one quarter of low- to moderate-income tenants have subsidized rents that are geared to income. A substantial majority of unsubsidized Metro tenants with low to moderate incomes pay more than 30% of income on rent, and that's a staggering figure.

Vacancy rates in greater Toronto are much lower than elsewhere in Ontario. This arises from the particular conditions of demand and supply here, especially in Metro. The Lampert report, done last fall on encouraging private rental supply, pointed out the distinct conditions in the Toronto market. The costs of building rental units here are much higher than elsewhere, mainly due to land costs. On the other side of the coin, rental demand is much stronger here. Each year, several thousand households come to Metro from other parts of Canada and abroad and most of them rent. Metro has documented these forces in our recent housing study.

So in precisely the part of the province where we most need to build apartments, it is the least economical place to build. Rental housing supply-and-demand issues in Toronto are on a scale far different from elsewhere in the province. They defy easy solutions. Metro Toronto is experiencing rapid social change generated by forces at work in the greater Toronto housing market. Metro has a large population of tenants reaching retirement over the next 10 to 20 years. They stay in Metro while young families buying homes mostly move out into the 905 suburbs. Meanwhile, new tenants move in.

Tenants' incomes have dropped further behind homeowners' incomes in recent years due to the recession, restructuring and fiscal constraint that we have been experiencing. Our priority as a metropolitan government must be to manage this change to ensure availability of housing, to ensure affordability and security and to maintain strong, stable communities.

One way Metro Toronto has traditionally managed housing issues is to be directly involved. Our Metropolitan Toronto Housing Co started building 40 years ago and now houses 20,700 tenant households, mostly subsidized. Metro also funds or administers programs that provide 400 care home beds for elderly persons and about 700 care home beds for persons with psychiatric disabilities. We run and fund some long-term hostel beds.

Let us move on from this setting the scene to talk about those three concerns I identified at the beginning of these remarks.

First, how can government in Ontario, in Metro, ensure adequate availability of rental housing?

One of the objectives of the government's proposals on rent control is to restore investor confidence and bring the private sector back into building rental apartments. Metro agrees that steps to encourage private rental construction are one essential element in rental housing policy. Canada Mortgage and Housing Corp's estimates and Metro's own housing study show that we need up to 6,000 new rental units each year in greater Toronto and we are not getting those housing starts.

A small part of this investor confidence issue is to lighten up the heavy hand of regulation that perhaps deters investors, but the larger part of this issue is how to narrow the gap between the market rents today and the higher rents it takes to generate enough revenue to pay for a new building. It is the economic viability gap that makes new units uncompetitive and deters investment. The gap could be narrowed either by raising rent revenues or by lowering costs or, which I would suggest and probably would agree, the only real option is by a managed combination of both of those.

Available evidence suggests that the decontrol contained in the tenant protection legislation will not lead to adequate volumes of construction in Metro Toronto or in greater Toronto. The gap is still too large for most investors, and condos present a more attractive alternative. What we may expect, relying on the British Columbia experience of decontrol as a guide, is a few hundred expensive new rental units each year in greater Toronto. But we are comparing hundreds of new units to thousands of new tenant households needed each year, and in greater Toronto the new units may be offset by the loss of units through condominium conversion, which the repeal of the Rental Housing Protection Act will open the door to, and I'll say more about that in a moment.

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Tackling the cost gap by raising rents across the board is unlikely to achieve the desired increase in construction. It will be necessary to take steps to lower development and operating costs. We understand that the government is also looking at a number of suggestions in this regard, as recommended in the Lampert report this fall, and I'll return to these points in a moment.

The record also shows that tax breaks and incentives were a key part and a key tool in Ontario in the 1970s and 1980s and are the main underpinning of rental production existing in the United States today. We urge the government to look at these kinds of options and not just leave it to deregulated rents to close the gap, because there will be a significant negative impact from deregulating rents as the government is proposing.

This leads us to our second concern: How can government ensure affordability and security of housing?

Affordability and security matter to us all. For a homeowner, it's the long-term benefit of a mortgage and the equity it builds for them. Government has stepped into the home buyer market with measures such as registered home ownership savings plans, down payment borrowing from RRSPs and so on. Similarly, for rental housing, there is a significant role, and must be a role, for government to play.

So Metro is glad to see the government's intention to retain two key elements of the existing legislation. These

are the basic protections in the Landlord and Tenant Act governing grounds for evictions and so on, and the rent control for tenants-in-place.

These basic tenant protections were put in place by the Ontario government almost 30 years ago. They help keep a balance of power between landlords and tenants and ensure due process. The main uncertainty regarding these basic protections is the shape of the new, unified system that is proposed to deal not only with rent regulation but with the landlord and tenant matters that are now being handled by the courts. The government's stated objectives are speed, efficiency, procedural fairness and administrative simplicity, but the details are not known. To ensure that tenant protection is real, we suggest that the system adopted should have the following components:

It should be independent and knowledgeable and have mediators who are knowledgeable, arbitrators or adjudicators; it should have a quasi-judicial, not just administrative, process in regard to serious landlord and tenant matters such as eviction, with provision for appeals; it should have rules and procedures that ensure adequate notice and access to information for tenants; and it should have adequate resources to carry out its functions.

Measures such as these would ensure an adjudication system with sufficient autonomy, resources and procedural safeguards to ensure that tenant protection is realized in practice. This will require a firm commitment by the government in this time of constrained public resources.

The second of the two main elements to be retained is rent control for tenants-in-place. This includes the rent increase guideline and the cap on above-guideline increases. These measures will help alleviate the incidence of so-called economic eviction where a tenant is forced to move and uproot their lives because they can no longer afford their rent. This supports affordability and security. But we know that approximately one in every five tenants moves each year and about 70% move in any five-year period. With this kind of turnover, a large majority of rental units will go to unregulated market rent levels before the end of this decade.

Although individual tenants will indeed remain protected as long as they remain in their unit, the overall affordability of the rental housing stock will not be protected. Government's concern must not be just about tenant protection for individual tenants but the overall supply of affordable housing in our communities.

Deregulated rents are likely to lead to faster rent increases in the Toronto area. Even with the regulated rents, affordability problems for tenants have been steadily worsening. This was true even in the good years of the 1980s, as some incomes lagged and as tight markets made it harder to find an inexpensive apartment. In the 1990s, problems have become much worse, as incomes have declined, especially at the low-wage end, and with unemployment remaining high.

In Metro, tight markets are now permitting landlords to start catching up to the legal maximum rents that they had fallen behind during the recession. Average rent increases in recent years have outpaced general inflation and outpaced tenant incomes. Deregulation of rents in the absence of new construction is a recipe for faster rent

increases, and therefore more tenants with affordability problems and more tenants forced to choose substandard and overcrowded housing in our community will be the result.

This brings us to our third concern: How can government retain stable and prosperous communities? The housing market has a significant impact on the character of our communities. The types and the prices of housing affect who lives in the area. Metro today is a mixed and vibrant community, but we are facing some challenges. The retention of rent control for tenants in place will protect some stable, middle-class or older tenants, but the loss of overall rental affordability will mean growing problems for newer and younger tenants.

People who pay too much in rent make up for it in other ways. They go to food banks; food bank usage has risen sharply in Metro. They spend less on clothing and consumer items; many of our small businesses are suffering as a result of less disposable income. They are more likely to fall back on publicly funded social services; hostels are an example in the extreme. Metro has seen a 40% to 50% increase in numbers of two-parent families and of children using our hostel system from 1991-95. People with difficulty affording their rent are likely to move more often, so their children shift from one school and neighbourhood to another.

In the absence of enough new construction, more rental housing needs will be met by basement apartments and older homes being rented out. Those things have their place, but they are not the sole solution, and in any case the government is moving to restrict that option. To keep Metro recognized worldwide as a livable metropolis, we must keep both stable, older neighbourhoods and economic vitality. One important step to stimulate the Toronto economy is to continue rental construction, which has been a very significant generator of jobs in construction and building supply firms over the last few years. We need not just a tenant protection package; we need a strategy to ensure this economic vitality.

Stable communities are maintained in older municipalities in various ways. Two key tools that will be affected by the government's proposals are control over conversion to condominiums and incentives to maintain property standards.

The government's proposals will lead to more frequent conversion of rental buildings to condominiums. This is especially true in Metro Toronto, with our many well-located rental buildings and our strong condominium market. Control over condo conversion is an important tool for older municipalities in Metro to manage change in an orderly way, in the same way that subdivision approval is an important tool for the growing 905 suburbs. Condo conversion means loss of affordable rental housing. The risk in Metro is that apartments in more favoured areas will be gradually converted to condo, leaving low- and moderate-income tenants fewer choices about where they can live. This would gradually produce the kind of segregated city we have so far been fortunate enough to avoid.

If outright control over condo conversion is to be lost, we would like to see other tools to manage change, for example, power to place reasonable conditions on, but not

prevent, condo approvals. Perhaps a portion of the resulting windfall gains could go towards rental production. I invite the Minister of Municipal Affairs and Housing to enter active consultation with Metro and other municipalities to explore such options.

Property standards are important in mature communities such as Metro. We have more than 130,000 rental units in buildings over 30 years old, and not all of these are well maintained.

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To conclude, the government's proposals must be assessed in terms of the three broad concerns I have addressed here. Such concerns were the focus of the second United Nations Conference on Human Settlements, which I attended in June in Istanbul, Turkey. Housing is a key building block of our cities, and governments must make housing decisions that ensure quality of life in the next century. Canada and other countries at the conference signed the Istanbul Declaration, committing ourselves to goals that include adequate shelter for everyone, preventing homelessness and equal access to affordable housing.

Our suggestion to you is that the government's proposals at this point are not sufficient to reach these goals. Metro respects the government's desire to ensure economic vitality by deregulating, reducing administrative costs and encouraging investment. But the proposed tenant protection legislation is not the comprehensive approach that is required. It attempts to deal with some symptoms but not the core issue.

Simply put, the core issue is to reduce the gap between the revenue generated through rents and the cost of building and operating rental accommodation while not reducing average incomes and purchasing power of tenants.

In the absence of any national housing policy, it is the main urban centres that will suffer the most. We urge the province to take action on some specific suggestions it has received and join with us in developing an overall strategy.

These are the specific suggestions that should be made to the province in order to deal with these issues: Reduce the property tax burden on new rental apartments to a level similar to that of condos, which would result in an improved financial viability; decrease GST costs for private rental construction to reflect that accorded to new-ownership housing; remove the provincial capital tax on new rental buildings; improve financing terms by taking a lead in making indexed mortgages more available, looking at use of immigrant investor capital, channelling pension fund moneys and considering loan guarantees to get the best possible lending rate.

Beyond this, I invite the government to participate in a dialogue on the complex issues I have touched on. Metro will be hosting a Cities of Tomorrow forum on November 13 to 14 this year. Experts from other cities will join policymakers in our own province and region. Our goal is to better understand and identify what kinds of fiscal and legislative capacities and what specific strategies will enable us to manage the scale of economic and social change taking place in our cities today. In doing this, we will examine case studies from other

jurisdictions. Housing will be one of the main themes, and I hope we can take away from that forum some ideas to work with.

Mr Chairman, thank you for your indulgence and for the extension of time that you have given me.

The Chair: Thank you very much, Mr Tonks. We appreciate your presence here today.

707-717 EGLINTON AVENUE WEST TENANTS' ASSOCIATION

The Chair: Our next presenter is Alan Hill, president of the 707-717 Eglinton Avenue West Tenants' Association. Good afternoon. Welcome to our committee, Alan Hill and Penny Gerrie.

Mr Alan Hill: We are grateful for the opportunity to address the committee this afternoon. We're taking a slightly different perspective than the one taken by the last two presentations; ours is a more personal one because we are residents and tenants in the two buildings here in Toronto.

We found the vagueness of the discussion paper frustrating and unhelpful. It is very difficult to respond to something so woolly-minded and lacking in clarity. The proposals appear to be preoccupied with the needs of landlords but offer no evidence to substantiate that landlords are hard-done-by. In fact, a private sector survey cited by the Globe and Mail showed that for the past 10 years landlords in the apartment sector have enjoyed a 10% return on their investment, higher than any other sector and certainly higher than the 3.4% return of, for instance, the Eaton Centre. Clearly landlords are not in penury.

If maintenance is an issue, much of the deterioration can probably be attributed to the past neglect of landlords. Why should a new generation of tenants be forced to pay for past neglect?

Speaking of the new generation of tenants, what about projections for future needs? The consultation paper provides no information on tomorrow's housing needs. All the tables and graphs stop at 1995. No demographic trends are cited. No economic forecasts or projected housing needs of the new workforce are considered in the paper.

We believe that the demand for housing with affordable rents will increase: by younger Canadians who are told that they must have lower expectations, facing a working life of contractual employment, frequent retraining and loss of job security; and by the aging population whose retirement years of living on fixed incomes will increase with early retirement and longer life expectancy. These pressures will be intensified by the government's withdrawal from assistance to social and non-profit housing.

If the government thinks developers are going to rush out and build rental housing, it should think again. The costs to developers would be prohibitive and they could build only for the high-end market. They simply could not produce housing to meet the income levels of those seeking moderately priced accommodation.

But the most troublesome part of the paper for us, and others who live in older, smaller buildings with moderate

rents, is the business of conversions, and it is this we wish to address.

Ms Penny Gerrie: We represent the tenants' association of 707 and 717 Eglinton Avenue West. We are paying the price of the conversion madness that gripped this city in the 1980s.

Our buildings were privately owned and managed by the couple who built them in the late 1930s. Mrs Watson lived in one of our apartments throughout her life. She managed and maintained the buildings to the highest standards and must have been one of the most responsible landlords in the city. She personally selected all the tenants and took great interest in their welfare. She managed to create an environment which produced a close-knit community of people, and the tenants were generally proud to live in these beautiful art deco buildings. Sadly, she became incapacitated and the management of the buildings was handed over to property management companies.

This was the beginning of declining standards. The tenants organized themselves into tenants' associations when they began to receive requests for rent increases which were way out of line of anything we had experienced in the past. They successfully fought a request for a 34% increase, which was reduced by the rent review commissioner to 18%.

Membership in the tenants' association was 100%, and we agreed to form a cooperative. Through the Federation of Metro Tenants' Associations, we put together a proposal to purchase the buildings that was approved by CMHC. Alas, those who had power of attorney in the owner's name turned us down. Subsequently, without so much as informing the tenants of their intentions, both buildings were sold to speculative developers for less than our original offer. All of this took place prior to the introduction of the Rental Housing Protection Act.

The new owner, a numbered company, promptly divested itself of all units by selling equity to a diverse group of people, only one of whom was a tenant. It became a saga of buying and selling, people moving in and out, illegal rents being charged, maintenance standards continuing to decline. Tenants naturally became anxious about security of tenure and a number felt sufficiently pressured to seek other accommodation.

Today, of 50 units at 717 Eglinton West, only 12 are occupied by original tenants. At 707 Eglinton West, 21 of the 64 units are occupied by original tenants. What was once a close-knit community has largely fallen apart. We're divided between owners and renters, and we know a number of units are rented to new tenants who are paying illegal rents.

Because of our experience and particular concerns, we want to deal first with the section on security of tenure and conversions.

1510

Mr Hill: We strongly object to the loss of power of municipalities to control conversions, demolitions and renovations. The housing needs of Toronto are not the same as those of smaller communities. Vacancy rates vary from community to community. The municipality is in the best position to know the needs of its residents and to protect rental housing stock.

Older buildings like ours have more reasonable rents, but lower property values also make them attractive to developers, speculators and investors. The repeal of the Rental Housing Protection Act would result in a rapid loss of moderate rental accommodation. Hardly a day went by at the time our buildings were being converted that newspapers didn't carry a story about an older building being taken over and older, long-term tenants being evicted.

Toronto isn't short of expensive condo housing, but it's very difficult to find moderately priced rental accommodation. As mentioned earlier, moderate rents will become even more rare with the loss of government assistance in non-profit and social housing. Not only will new projects not be undertaken, but rents will rise significantly in existing projects as tenants are forced to bear all costs.

We know that all older buildings haven't been maintained as well as ours. Until a decade ago, we were fortunate indeed. We, as well as our previous landlord, benefited from the interrelationship of a high level of maintenance and a stable tenant population. Much has been made of the movement of people who are tenants. The buildings in which we live have tenants who have been there 40 years, 45 years, 30 years, and the majority have been there for 20 years.

The current rent control system has a mechanism that allows landlords to pass maintenance and other costs to tenants. Our fear isn't of increased and reasonable maintenance costs, it's being forced out of our homes through eviction or through less direct means. As tenants who face possible eviction because of conversion, we want to be allowed to remain in our homes until we choose to leave. As model tenants, we deserve this. The government's vague references to "extended tenure" make us very anxious.

Our proposal is not unreasonable. Attrition has reduced our number from 114 to 33 in the 10 years of co-ownership. Most of us have lived here for over 20 years. Many are very frail and live on very modest incomes.

We want foremost to protect our continued tenancy, but as tenants who choose to live in smaller, older buildings, without the conveniences of newer high-rises, we urge the government to reconsider its proposal to repeal the Rental Housing Protection Act and to allow municipalities to protect this kind of moderately priced rental stock.

We also want to make a few comments on other sections of the government's paper, especially protection from unfair rent increases.

Ms Gerrie: The government obviously has more confidence — absurdly so in our experience and opinion — in both the reasonableness of landlords and the strength of tenants to negotiate rents or volunteer to pay for capital costs or new services. At least under the present system, students and others who may not have strong community connections have access to the rent registry and documentation on the legal rent for a prospective apartment.

Under the proposed system, the easiest way to get a large increase is to get a new tenant. We worry about harassment. As older tenants in both tenancy and age, we

feel more likely to be targeted because of our modest rents.

Our anxiety is not eased by the government's vague proposals for a dispute resolution system. Harassment is sure to increase, but it can be very difficult to initiate a complaint, much less substantiate it, prove it or monitor it. If the government thinks the present system is cumbersome and bureaucratic, it will have to come up with something brilliant to manage harassment complaints. We need more details and clarification on what the government is proposing.

Mr Hill: The government's proposals relieve landlords of the responsibility for proving increased costs. Moreover, they make it easier for landlords to avoid necessary repairs.

Our experience has been that withholding rent increases is the most effective way to enforce outstanding work orders and to help ensure tenant safety. We could still be waiting for work to be done on 1989 orders if the rent control office hadn't ordered the suspension of rent increases in 1992. It still took two years, and although increases of the intervening years were added to our rents in the end, it forced the landlord to do the work.

The government's proposals to give property standard inspectors more powers and to increase the maximum fines will do little if municipal cutbacks and downsizing reduce the number of inspectors and if maximum fines are not ordered by the courts.

With regard to the Landlord and Tenant Act, the vagueness of this section is worrisome. On the one hand the government says grounds for eviction, except for unauthorized sublets, will remain unchanged; on the other hand it proposes to improve the ability to enforce landlord rights.

Our continued tenancy during our building's conversions to co-ownerships was protected because of the existing Landlord and Tenant Act. We would strongly object to any changes that gave similar right-to-evict powers to co-owners or other ownership schemes that are now given to condo or single-family dwelling buyers and owners. Leave the act alone, please.

What the government is proposing is vague and alarming. We could say that because we've recently held a meeting of our elderly tenants, who are thoroughly alarmed, given the stability that tenants have enjoyed for the past half-decade.

We would like to have an opportunity to make more substantial comments after we see the proposed legislation. In the meantime we urge the government to consider its proposals very carefully. If the purpose is to increase rental housing stock, removing protection against conversion won't help. In fact, it will reduce rentals, and moderately priced ones at that. Instead, the government should be looking at ways to remove the real barriers to building rental housing: property and sales tax inequities, and development and financing costs.

Thank you, Mr Chairman. We have a question, if we may ask it of you: Can anyone clarify what is meant by "extended tenure" when it applies to conversions?

The Chair: Maybe a member from the ministry can answer the question. The parliamentary assistant has stepped out.

Mr Karl Cunningham: What the government is proposing is that in cases where there is a conversion, there would be specific provisions that would allow a tenant of that unit to remain in that unit despite the fact that the unit has been converted to a cooperative or a condominium.

Mr Hill: Would it protect the rent that the tenant is paying, or would it suddenly transfer the costs of the conversion over to the tenant, whether it be prorated or whether it be amortized or whatever?

Mr Cunningham: The proposals suggest that the tenants in those circumstances would have the same rights as other sitting tenants, so that not only would security of tenure continue for that tenant, but the existing legislation would as well.

Mr Hill: The tenant would not be subject to major rent increases.

Mr Cunningham: No. Our current proposal is no; they would not be treated as vacant units would be.

Mr Sergio: As long as you stay in that particular unit.

Mr Hill: Yes, of course. I understand that.

Mr Smith: Thank you for your presentation. The committee has heard concerns expressed about the removal of municipal control on conversions and, in a similar vein, concerns expressed about the absence of statutory definition around equity co-ops. We've also heard from an individual who is in a conversion process, where they have a 100% agreement for that conversion to take place, yet there's a barrier for the conversion to take place due to city of Toronto policies. Obviously there are some encumbrances in this area that need to be addressed. With the short time that we have, I wonder if you have any ideas — I recognize that you articulated your concern very well — whether there's a common ground here to address these concerns from your experience or if you have any solutions to the problem.

Mr Hill: I think there is a possibility if there is consultation with the people who are actually resident. You people are all legislators. We've just heard from Metro Toronto; we've heard from Peel. We are the people who live in these buildings. We're the ones who experience at first hand what happens. We would like to have the opportunity — not here this afternoon; it would be impossible to address all the concerns in probably half a minute — and there should be some mechanism where we can sit down with you and talk these things over, where you use our collective intelligence, our collective experience so that it isn't simply a matter of government pushing everything at us as we seem to be experiencing in life at present.

1520

Mr Grandmaître: I'm going to follow up on the first question of conversion, especially converting to co-ops. I'll give you an example of let's say a 25-unit building, where 75% of the people agree that it should be converted but 25% don't agree. Are you telling me that this 25%, let's say 12 units, will remain as rental units and their rent will not increase? Is that what you're telling us? Is that what the legislation guarantees?

Mr Cunningham: There's no legislation. What we're proposing is that in those kinds of circumstances, first of all landlords would be given the statutory right to con-

vert, but existing tenants in those buildings would be given added security of tenure. They wouldn't be forced to move as a result of the conversion. What's open for consultation is, how long should that security of tenure be in cases of a co-op or condo conversion? Should it be lifetime? Should it be another type of limited period?

Mr Grandmaître: Until they move.

Mr Cunningham: Until they move.

Mr Marchese: I've got some quick comments on your presentation. You're quite right that the elderly, generally speaking, are very alarmed. I was at a meeting this morning where most of the elderly people talked about how frightened they really are about decontrolling rents and other measures that are being introduced in terms of the anxiety these provoke. So you're not the only one.

Secondly, on the issue of negotiating rents, when power is unequal you can't negotiate; you can only negotiate with equal partners. You can't negotiate — a little renter, an elderly, unemployed psychiatric survivor — with someone who's got a great deal of knowledge and power. It just doesn't happen.

Mr Hill: We know that from past experience, sir.

Mr Marchese: I bet. On your point about the Rental Housing Protection Act generally, Mr Tonks talked about the condo market being very strong here. Mr Fink, a lawyer, talked about his fears, in the field for over 20 years, that this will mean the conversion of rental accommodation in quick measure, so we need to worry about the general implications it will have in terms of finding affordable housing as well as being worried about what happens to individual people who live in such units. You're right that we should be looking not at rent control, taking that out, but what we need to do to build, and that's not the issue.

The Chair: Thank you very much. We appreciate your input into our process this afternoon.

RAMSDEN PLACE TENANTS ASSOCIATION

The Chair: Our next group is the Ramsden Place Tenants Association, represented by Jaqueline Swartz, president, and Lyn Rayner, director and treasurer. Welcome to our committee.

Mr Lynwood Rayner: My name is Lynwood Rayner, and I'm director and treasurer of the Ramsden Place Tenants Association. I had hoped to have our president, Jaqueline Swartz, here with me today. Unfortunately her paper sent her down to cover the first convention and she's still down there covering the second one. As it were, I'm flying solo today.

Our presentation, as you may have seen already, is very unlike Metro Toronto's or the Peel government's. It's more like the predecessor, the people on Eglinton Avenue, a tenants' association like ours. It's a perspective from tenants on the front line fighting the rental wars, and we're hurting.

You see that on page 2 we have a comment summary, and if time permits I'll go over that at the end of the presentation.

We're a two-building complex directly north of Queens's Park here; 400 suites at 30 and 50 Hillsboro. Our tenant association started in the mid-1980s, when we

decided to defend ourselves against the increases that were coming at us. By the time the dust had settled and we had fought several hearings we ended up with an increase of about 28% over a period of about two or three years. That's been compounded since then. The result is, even as I left our buildings today, people are leaving.

The two buildings are very well maintained. We have no problem there. We have a progressive landlord, caring superintendents and a superb location. We're just overlooking a park near the Rosedale subway station. But we're hurting. We're hurting because the rental increases that have been allowed thus far have been so high, compounded in the period of time since they were initially granted, that we are now very fearful of the future.

When we saw this discussion paper some members got together very quickly. The executive looked it over very quickly, Jaqueline Swartz and myself, and we were astounded. We could not quite understand initially what was meant by tenant protection when the very opposite appeared to be written on the pages.

This presentation is very much from the point of view of what the members have told us. We're not dealing with facts and figures so much as personal opinion gained from our members.

Through the TV service of the Ontario Legislature we've been privileged to follow some of the submissions from the parent group, the Federation of Metro Tenants' Associations, the United Tenants of Ontario and others, and generally speaking the criticisms of the proposals as outlined in that paper mirror our own feelings. They mirror the RPTA's feelings. Rather than go over them in great detail again, I'll skip over them but touch on some points that may not have been touched on previously.

The term "tenant protection" defined: As I said, our members were aghast when they saw it. They said, "If this is protection, if this is tenant protection, pray tell, what is non-protection?" One of our members said, "This is a pure example of doublespeak." One of the members of your committee used that term I think on the opening day.

"Doublespeak," as you know, came from George Orwell. As you can see in our presentation, I've compiled a few other examples: "War is peace"; "Freedom is slavery"; or my favourite from his novel *Animal Farm*, "All animals are equal, but some animals are more equal than others." If George Orwell were alive today he'd have a field day with this discussion paper. Far be it for me to invent new Orwellian phrases, but the temptation is just too great. Into the modern literary lexicon we might add, "Tenant protection is the removal of tenant protection." Orwell would feel right at home.

The governing party of Ontario has now encompassed and is practising doublespeak. However, tenants in Ontario will not be fooled. They too have read Orwell, but little did they think it would come to Ontario in 1996.

It should be pointed out that this phenomenon is not confined to the tenant problem. Look at the environmental proposals. The governing party tells us that to "save the environment for our children and our children's children" they will abolish many environmental regula-

tions, cut the number of inspectors, slash funding and — hear this — have the polluters or potential polluters monitor themselves. This is necessary, they say, to save the environment for the future. Heaven help us in the interim.

We're dealing here with a free-market fundamentalism. A well-respected developer on your opening day recounted how he had built the first apartment building with elevators and he wondered if tenants would come, and they did come. He commented in a somewhat folksy or whimsical way that he loved tenants, oh he loved tenants, he couldn't do without tenants. Leave it to him, as the vernacular goes, for tenants were his baby. Said he, "Abolish the regulations, spade into the ground, work for construction people, prosperity all around."

1530

I appended a note of levity here because we have been very serious. "'Boy, do I know chickens,' says the fox. 'I couldn't do without chickens. Chickens are my life and blood, so to speak.'" But the chickens say, after they emerge from their so-called apartments — coops, of course — "Who we are to turn to if the fox just neglects to keep his word?" That is, if there are any left in any shape to complain. "And, more importantly, to whom will I complain?" The association of benevolent foxes perhaps?

To be fair to Mr Goldlist, he's a respected developer and he did have some solid suggestions we agree with — the unfair taxation, the extra taxation levied against apartments municipally here in Toronto as compared to condominiums and single homes. This is a disincentive, but mostly it's very unfair. Mr Goldlist mentioned \$75 per unit could be reduced if that were looked to. Our municipal people, our council promises to do something about it, but each time our association has mentioned it there are problems. We're still waiting.

We're puzzled, however, by Mr Goldlist's repeated question that went: "Non-profit housing? What mean this non-profit housing?" He couldn't understand the need, it appears, for affordable non-profit housing. If Mr Goldlist is listening, and to you members of the committee, it's not difficult to understand: "non-profit" as in non-profit education, non-profit police forces, non-profit court system, non-profit military and so on; non-profit for the purpose of service to the public rather than just a potentially exploitative service that provides the service but with the main objective being profit — not bad in all cases perhaps, with the public good often becoming secondary in the process.

The free market fundamentalism beliefs of the governing party of Ontario today are beyond belief. You believe the free market, given the chance, can solve most problems, provide most every service, even provide all the housing a growing population needs today. The free market as we know it in the western world, and possibly even others, has consistently been unable to provide affordable or low-cost housing to people who are unable to meet market rents. Time and time again it's been shown, and I've heard it in the presentations before me — I hear it still being argued — that given the chance, they will provide it. They're not. They can't.

In the area that we live in on Hillsboro Avenue, on Yonge Street, on Davenport Road, nearby they're building high-end condominiums. We don't see any others. In fact, right on the corner of Yonge Street and Belmont there's a condominium going up and they're naming it right after us: Ramsden. God knows why.

From what we can see, the discussion paper doesn't appear to mention affordable low-cost housing. If it does somewhere, we've missed it, but I haven't seen it. So we ask the question, why not? It's a serious problem. Why isn't it addressed? Are you assuming that if you don't address the problem it might just somehow go away, the people just disappear, the need won't be there?

More on this business of private builders being unable to provide this low-cost, affordable housing: Figures fly around all over the place, and over a period of time we've gone after them and Jaqueline Swartz has amassed some. Canada Mortgage and Housing says it can cost upwards of \$200,000 to put a single unit on the market. The figures vary, as I say, but it is indisputably highest right here in the Toronto area. Even if the figures could be shaved to \$150,000 or less, this easily translates into a rental of \$1,500 or more. The builders will tell you this. They're not talking low-cost or affordable housing; they're building high-end units, as I've said, for outright purchase that the owners buy and then put up for rental. We've never been able to figure out who these owners are, whether they're from offshore or maybe somebody just around the corner, but not around my corner.

Who can afford this? Who can afford these rentals? Certainly not the poor souls who've had their welfare cut by 21% or more, or the victims of downsizing, the jobs that have taken the expressway south or west to Asia, or the seniors — especially the seniors, not the coupon-clipping seniors, your favourite kind of the governing party, but the other ones, the ones the governing party doesn't really like to talk about: the quiet, hidden ones, out of sight. They're out there, but nobody hears about them. So we ask again, why is this particular problem not being addressed in the paper? Out of sight, out of mind, perhaps?

Other presenters have repeatedly pointed out that the governing party promised to preserve rent control. This was, of course, before the election. As the member for Scarborough North pointed out, they continued to promise it even during the recent by-election in York South. So I'll add one more to this discussion, a personal one: The member for the riding of St Andrew-St Patrick, where we're sitting right now — I think we're in St Andrew-St Patrick —

Ms Isabel Bassett (St Andrew-St Patrick): Right.

Mr Rayner: — promised, when I met her in the hallway, that rent control would be preserved. Yes, it would remain. She's an old colleague of mine. The member's an old colleague of mine from the Toronto Telegram, and I talked to her briefly in the hallway. It's a matter of trust, we felt, because colleagues generally in the journalist business tend to respect each other, especially when they're on the same side. So I pointed out to our tenants in the newsletter that rent control would be preserved. But, alas, a phantom special-interest group, certainly not the tenants, appears to have a prior claim.

The reason I'm referring to this is that at one time Conservatives did keep their promise. The best example, in 1975, was Conservative leader Premier William Davis. He pointed out that in 1974, rents were skyrocketing. The private sector was not building affordable housing and there were no hints of rent control. So where was the affordable housing? That's the situation even today, although we have rent control, and now rent control is being blamed. Premier Davis saw the problem 21 years ago and moved to try to correct it. Everybody's blaming the problems today on that rent control.

We will admit the problems are complex; there's no denying that. To be fair, it's not entirely the builders' fault. High land cost, construction, materials, labour, governmental regulations, all serve to push up building costs. I'm telling you something all of you know. But to do nothing in this particular problem of affordable, low-cost housing versus high-end is to court disaster. It's the old business of, "There ain't no light at the end of the tunnel if you don't do something about it."

In my own case, in my own building, rents tended to go askew before the establishment of the rent registry. The only thing the Conservatives did not do in 1975 which most of us regret is they kept talking of a rent registry, but they never got around to implementing one. Now my neighbour across the hall, with exactly the same one-bedroom as mine, is paying \$250 more than I. Under the proposals in the paper, this problem will escalate if the proposals are implemented. Neighbours with lower rents are resented. We're being accused of having a "free ride." But ours is the legal rent.

1540

When we moved into our present apartment in the early 1970s my rental was \$166. Today, under control it's \$750. This amounts to an increase of 452%. Although I've worked as a journalist, broadcaster, a PR practitioner of sorts — certainly not as a public speaker — my income, however, has not increased with that degree of percentage. There's no way that I'm earning 452% more. It may be my fault, but others are in that category too. So who's getting the "free ride"?

Constant mention is being made of the lack of financial incentives for landlords to maintain their buildings. It appears to go against the grain even to suggest that tenants should be paying more, against the grain, as far as landlords are concerned, to suggest that they should be maintaining their buildings based on what tenants are paying. Tenants should be paying more and more and more.

There are several reasons why some landlords, and some landlords only, are neglecting to maintain their buildings, and luckily our landlord is not one of them. Buildings are flipped and re-flipped —

The Chair: Excuse me. You've got one minute to wrap up, please.

Ms Rayner: All right. Buildings are flipped and re-flipped and now the proverbial goose has come home. The tenants are the sitting ducks and they're paying.

Obviously, I'm going to run out of time, so I'll say to you that if rent controls are removed our tenants in our two buildings, our members and others, fear for the future. If the affordable housing crisis is not resolved, if

the supply of affordable low-cost housing is not increased, a crisis will follow. Let me say this: As the crisis deepens, some future government will bring back a true rental control in some form to protect vulnerable people. And it's our belief that it will return with a vengeance.

The Chair: Thank you very much, Mr Rayner. We appreciate your attendance with us this afternoon and your input into the process.

GARDINER ROBERTS

The Chair: Our next presenter is Carol Albert from the law firm of Gardiner Roberts. Good afternoon. Welcome to our committee.

Ms Carol Albert: Thank you, members of the committee, for the opportunity to address you. My name is Carol Albert. I'm a lawyer and a partner in a law firm in Toronto, and just so you have an understanding of my background and why I am here, I have been practising for 14 years — not quite as long as Richard Fink — in the area of landlord-tenant residential tenancy law. I appear before tribunals, courts; I've appeared before all the various levels of the rent tribunals in the various incarnations since the Residential Tenancy Commission, and before the Ontario Court (General Division), its predecessor, and the Divisional Court in appellant levels.

I am here to offer some of my experience and recommendations with respect to matters of process and procedure, and to speak to you as a practitioner and not as an advocate or lobbyist on behalf of any one group or another. I will focus my presentation on process and speak to you on three of the points, but I will leave you with a paper that I believe has been circulated which has a little bit more detail on these and other topics.

The three points I wish to address in my remarks are, firstly, the proposal to move out of the court system the landlord and tenant dispute resolution, the present landlord-tenant court types of applications.

Secondly, I will address the issue of the structure of a decision-making body or a tribunal to deal with either residential rent regulation issues solely or those issues plus the Landlord and Tenant Act type of issues that are proposed to be moved out of the courts.

Thirdly, I will address the issue of mediation as a necessary component of any newly created dispute resolution system.

To begin, as you are aware, at the present time landlord-tenant disputes that are in front of the courts are matters that deal with termination of tenancy, arrears of rent, assignment and subletting of apartments — the matters that deal with the relationship of landlords and tenants. The decision-makers in those cases are federally appointed judges exercising jurisdiction as judges of the Ontario Court (General Division). Frequently, the fact situations that are presented to the courts in these cases are heartbreaking. A judge is required to make a correct decision in law and to make that decision regardless of the hardship that may result to one of the parties. That is a fact and that is a reality. My submission to you is that adjudication of these types of disputes ought to remain with the courts, and the rationale for this is the need for independent decision-makers who are impartial in perception but also in practice.

The problems that I have heard about the court process to date deal with delays. It's anticipated that if the system is moved into a tribunal it could be made into a quicker system. I was here when the representatives from Peel were making their presentation, and I agree with many of the process types of recommendations they make for speeding up the court process. These recommendations — giving the registrar, for example, more powers — would go a long way to remedying the problems that are being experienced today in backlog, in particular in the Toronto area.

Those problems can be addressed. There is no need to move wholesale the entire dispute resolution process of those matters into a tribunal, and the concern I have as a practitioner is that to do so would very possibly result in the whole system grinding to a halt. I do, however, address in my paper — and if time permits, will address here — how, if the matters are moved to a tribunal, the process could be designed to at least try and keep these things moving quickly.

When matters are dealt with by judges in courts, why is there a perception in the public that judges are impartial? I address this point because the next point, when we move to structure of the tribunal, a very critical point, is, how does one go about selecting adjudicators? Judges are independent and they are impartial. Tribunals, on the other hand, will inevitably be seen to lack independence. This would be particularly so when there are short-term appointments. Members concerned with reappointment subconsciously may feel a pressure to give a performance that is acceptable to those exercising power of reappointment. Impartiality and the will to give unpopular decisions are to a greater or lesser extent impaired from the outset. I emphasize this point because we are dealing with many heartbreaking and very difficult hardship cases that go before the courts on eviction matters.

A tribunal is not likely to develop a special expertise in landlord and tenant matters. Landlord and tenant matters are inevitably matters that turn on fact and on law. Unlike rent regulation, which is highly technical and highly complex — and a tribunal develops an expertise dealing with those matters — landlord and tenant disputes are different. There is no benefit to be gained from tribunal adjudication on landlord and tenant matters — eviction, abatement and those kinds of things. For those reasons, those matters ought to stay in the court. For reasons of lack of time I will move on to the next point.

1550

In terms of setting up a tribunal structure, and this is my second point, assuming that the landlord and tenant matters are transferred, or if they're not and only the rent regulation matters are dealt with by the tribunal, one must look at how one can safeguard against those problems that would be inevitable in any new tribunal being structured. One has to start from the point of independent decision-making by an independent body. There must be separation of the ministry and the decision-makers. That's a critical element of a system that has justice inherent in it.

In terms of method of appointment, it's recommended in my paper that the appointments be by order in council, that they be for terms that are sufficiently lengthy as to

permit independence — and five years is a suggested number — and that the appointments be on competition. We're not looking at a question of patronage or political connections; we're looking at competition on a merit-based evaluation: skill, intelligence, knowledge of the law, ability to control process, experience — all of those factors. Order in council doesn't mean that those factors are thrown out the window; it means that a very careful process is put in place to ensure that the members have qualifications that are appropriate and the ability to carry out their function effectively. In my paper, I address points that deal with qualifications and training.

With respect to the process itself, how can one design a process that will move along quickly? This is an extremely difficult challenge that the ministry and the government face in designing a process. First, right now a registrar in landlord-tenant court deals with matters as the first member of the judicial system to address a problem. The registrar, if matters stay in the landlord-tenant court, should have enhanced powers to dispose of all of those applications that have no defence, no merit in the defence, no applicant pursuing it or absence of payment into court if the money's disputed. Let me just break that down on a couple of the points.

Right now, the registrar does not have the power to dismiss an application or issue judgement on an application where the defence has no merit. In other words, if the defence is such that if all the facts entered are proven to be true, could the defendant win, and if the answer is no, the case should not go forward. If the tenant's reason for not paying the rent is, "I have no money," that is not a defence that could win in law and the registrar should have the power to sign judgement, and the registrar does not.

If, on a parallel train of thought, we're now looking at a tribunal making these kinds of decisions, there should be a hearing officer in place who would perform that same front-end function of getting all the cases placed before that hearing officer at first instance, disposing of all of those that can be dealt with by default judgement or dismissal at an early stage, and then only move to the hearing those that have a defence in writing and merit in that defence, that could win if proven to be true. That would weed out a lot of the cases that are presently in front of the court.

If one takes a day and spends it in the courtroom of a judge such as Mr Justice Kane in the Ontario Court at 361 University, you would see a judge who goes through 40 cases in a day. A significant concern at a tribunal is that in my experience I've never seen a tribunal member in the rent system in my 14 years who could possibly go through 40 cases in a day, and there are reasons for that. What one would need, if it was a tribunal setting, is a screening process at first instance to move the cases along. I've elaborated on these points in my paper. Again, out of respect for the time that we're dealing with here, I'm going to move forward.

Mediation is my third point. You heard from speakers addressing you on the question of mediation. In my submission, mediation is a necessary and valuable component of the justice system. Mediation is being embraced in all aspects of litigation in Ontario; courts,

tribunals and litigants alike are all embracing mediation. It's not the panacea that one might think it could be, but it is a solution in appropriate cases.

Appropriate cases involve a number of factors. Mediation must be voluntary. One cannot be forced to agree — that's an oxymoron — but for those parties who wish to enter into a mediation opportunity, there should be that opportunity through the decision-making structure that allows it to happen at the front end quickly and without delaying the process.

Mediated solutions should be encouraged by the legislation. One very critical change is needed in legislation that we've had in the rent control area since the beginning of the various schemes of rent regulation and rent control over time, and that is the removal of the prohibition on entering into agreements to the contrary of the act. There may very well be situations where the parties wish to design a solution that works for them, but on the strict letter of the act it wouldn't be enforceable. That prohibition should be removed.

One then asks: What about the fragile party? What about the unequal bargaining power of the parties? Those problems can be addressed in a number of ways, and I'll give you two suggestions. The first one is a cooling-off period for a settlement, as in other consumer protection legislation. A second possible solution to the fragile party, where that party is of insufficient financial means, is an agent or counsel of a duty counsel nature, someone to assist that party in the mediation model. The fact that there may be some fragile parties out there doesn't mean one should dismiss the whole opportunity that mediation presents to us.

In terms of who the mediators should be, this is an interesting question. We have at the present time a pilot project at the ministry where mediation is being utilized, in some cases successfully but in other cases not. The situations in which it is not successful give rise to comments that I have as to how to make it a more successful opportunity.

The main concern I've experienced in the mediation pilot project is the lack of separation of mediator and ministry. Mediation by its very nature requires disclosure of certain facts by parties that one wants absolute assurance will remain confidential. In fact, as a practising mediator, one of the practices mediators have is to destroy their notes after a mediation is over. Everything should be confidential. When one is disclosing to a ministry official that one has charged illegal rents, what guarantee is there to that party that disclosing that won't result in enforcement proceedings? So there's a lack of trust if there's a built-in closeness of the mediator and the ministry. There has to be a separation. How can that be resolved? Using outside mediation models such as the new pilot project in landlord and tenant. We've heard from the self-help group. There are mediation projects out there. More can be designed. There are independent mediators. All of these present opportunities for that to be used.

Timing: As I referred to briefly, mediation must be brought in at the early end of the process, before the hearing date and not in any way to delay the hearing date that's being assigned to the case.

I have included in my remarks a couple of comments about what have turned into marathon hearings under the present system, marathon hearings being those that go on for days and days on end. These don't have to happen. There are reasons why they happen, and those reasons can be addressed in the proposed legislation. I urge you to take a look at those portions of the paper.

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By way of conclusion then, the government of Ontario is facing a very difficult task in overhauling a system of justice that is probably the only glimpse that most people ever have of our justice system. Access to the courts is an ancient civil right and if landlord and tenant applications are removed from the courts to a tribunal, then the government must recognize the grave responsibility it faces in redesigning a dispute resolution that would impact probably more residents of Ontario than any other adjudicative process in the province.

Justice delayed is justice denied. We've all heard that. The sheer volume of cases dictates that an approach to dispute resolution in the newly designed system must include mediation, an ability to process cases quickly and decision-makers who have the capacity, qualifications and experience to process those cases quickly and fairly.

Thank you very kindly for your time, and if there is any time left, I'd be pleased to answer questions.

The Chair: Thank you very much, Ms Albert. You've done a remarkable job of filling in exactly 20 minutes, so unfortunately there is no time left for any questions. We do appreciate your interest and your presentation here this afternoon.

HALTON HOUSING COALITION

The Chair: Our next presenter is the Halton Housing Coalition, represented by Gwen Maloney, the general manager of the Halton Non-Profit Housing Corp, and Ted Hildebrandt, the chair of the Halton Housing Coalition. Welcome to our committee.

Ms Gwen Maloney: As I've been introduced, I am Gwen Maloney and I'm general manager of Halton Non-Profit Housing Corp. Ted Hildebrandt, who is with me, is the senior social planner with the Halton Social Planning Council. As well, he's the chair of the Halton Housing Coalition.

The comments which we are making today represent the Halton Housing Coalition, which is a coalition of non-profit housing and service providers in Halton. We've been in existence for approximately four years, and we're concerned about advocating on behalf of the needs of low- and moderate-income renters in Halton. We've been involved in a lot of initiatives that look at efforts by government and others which affect the supply of housing.

We thank you for permitting us to make a presentation today. I am very impressed with the quality of submissions that we've heard today, and I was in attendance last night, listening in as well. There are very many wise people around Ontario who are making presentations to you. They have had a lot of experience and their comments are thoughtful and, I think, very helpful.

My concern is that the legislation that may come out of this process should be one which is a win-win situ-

ation. If we come up with legislation and people say, "The tenants aren't happy, the landlords aren't happy, we must have done a good job," I don't think so. I think you have the resources, you have the input from many wise people who can give you food for thought to come up with an improved form of legislation.

Mr Hildebrandt and I have focused our oral presentation on issues which we think affect the supply of affordable housing in Halton, and we are also going to be submitting a more detailed paper to the committee in writing prior to the deadline.

As a provider of non-profit housing in Halton, I've had experience in developing and managing a portfolio of 735 homes for low- and moderate-income people. I also have a waiting list of over 1,200 families and individuals in Halton who are looking for affordable housing.

I was very intrigued by the concept put forward in this proposal that if we remove rent control, rents will naturally rise to their natural level and that new construction will be stimulated. Before we embrace this idea, I think we should look at the costs of new construction and the economic rents which new construction forces. I've provided two examples, which are in appendix 1 of our handout. One is a 91-unit townhouse project in Burlington and the other is a 126-unit apartment building.

In the case of the townhouse project, using some fairly standard figures, I found that the economic rent, or a rent which covers all costs and provides a level of profit for the landlord, would be about \$1,152 per month. In the actual case that this is based on, the rents that are received are \$240 per month less than the economic rent. So it's not an economically viable proposition for a landlord to build here. In effect, we have found that in Halton, where people are approaching \$1,000-a-month rent, they're looking to buy. They're not interested in renting. They can easily buy a house at that rate. Building townhouse projects in this situation probably is not feasible for the rental market because our landlords are up against the competition of ownership.

The case of the apartment building, however, is very concerning. Here, the economic rent example is \$1,300, but the current rents that are being received on average are \$684 a month. Those rents are very typical for that market. What we have here is, if an investor wanted to build such a building, he would have to see the market-place rents almost doubling before he would have a product that would be attractive to renters in Burlington.

We feel that in both cases current market pressures of the cost of construction and the current market rent rates discourage new construction. We're concerned that before new construction can be stimulated, you would have to see a tremendous change in the rental rates that are being charged in the market. So I guess we just question that construction will be stimulated by the movement that's proposed here in terms of rent controls.

My second comment relates to the cap on capital improvements. I just used the statistics that were provided by FRPO to look at what amount of capital improvements are going to be required here to bring existing housing back up to standard, and my calculations are that it would be about \$12,500 per unit in capital improvements. This equals a cost pass-through of a rent increase of almost

20%. With the proposed legislation, a landlord could only have a 4% increase, so again, I think we're going to have a tremendous disincentive or lack of ability of landlords to really bring their properties back up to standard.

Mr Hildebrandt is going to take over the presentation from here.

Mr Ted Hildebrandt: At this point, I'd like to build on some of Ms Maloney's comments about the cost of doing capital repairs and tie that to the proposal in the discussion paper that the Rental Housing Protection Act be eliminated.

I think that landlords will be very tempted to get out of the rental market completely because it is impossible for them to maintain their stock within the proposed rent guidelines. In most markets, and particularly in Halton, the same factors are in place today that spurred the government to implement the Rental Housing Protection Act in the first place, so we're strongly opposed to the elimination of this protection.

In Halton, we have a very low vacancy rate. It's an average of about 1%, and as you can see in our appendix 2, we've included rates: for Burlington it's only 0.9%; in Oakville 0.5%; and for Milton-Halton Hills 1%.

The average rents are not affordable for low- and moderate-income earners. We have found that tenants in receipt of social assistance are forced to pay up to 75% of their total benefit on shelter, leaving them with as little as \$300 per month to feed, clothe and provide for their family. What will happen to this family if rent control is removed, as proposed? They can't afford more rent. Measures such as doubling up, overcrowding in substandard housing or even breaking up of families are inevitable. In our appendix 3 you can see some information about the affordability of housing for low-income people in Halton.

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I think the proposed legislation will have the effect of reducing the number of rental units in Ontario through the conversion of apartments to condominium or through demolition. This point was also touched on by earlier submissions. Rental rates will be driven up as the vacancy rate goes even lower. Low- and moderate-income tenants will have less choice and higher costs. Already in Halton, according to the 1991 census, more than 30% of renters pay more than 30% of their income on housing. This is above what is considered that people should be paying on housing. We can only expect this to increase over time.

Another aspect of the proposed legislation would allow tenants and landlords to negotiate an above-guideline increase in their rent. We find this very interesting and can see that this might be a powerful tool for the tenants. Tenants now have the opportunity through this proposal to negotiate together for improvements in their building. Landlords, if they choose to participate, might be challenged to open their books to demonstrate what they can afford, and they could also be held accountable by the tenants for how much money is spent on these above-guideline improvements.

As a tenant, I would first question, where did the money for capital improvements go that I've been paying in rent over all these years? Did it go to the capital

improvements that were supposed to be covered in that rent? We would ask that the committee consider a process whereby tenants are not asked to pay for deferred maintenance which should have been done to maintain the building at minimum property standards over time.

Finally, the proposed changes will have a significant impact on tenants and landlords. For tenants to be able to exercise their rights and benefit from the protection of the legislation, such as the new proposals around harassment, they will have to be well informed. How does the government propose to do this? The decision to close the housing registries in Halton this month is not a signal that the government is committed to informing tenants of their rights. Where will the tenants turn in the future for advice on rent increases, protection from harassment and assistance in ensuring that their homes are maintained in a decent manner?

Thank you for the opportunity to come before the committee. We will be making a more detailed written submission before the deadline. We'd be pleased to answer any questions that you might have.

Mr Curling: Thank you for your presentation. I think you have touched on some very important points here. With the selling off of the non-profit housing that is being mused about by the Minister of Municipal Affairs and Housing, do you think this would bring a greater pressure on the affordable stock?

Ms Maloney: Yes, it would. I think there are 120,000 non-profit or social housing units in Ontario, and that's a significant portion of the stock. Yes, if people were forced to pay the break-even rents, it would not be feasible.

Mr Curling: The minister, I expect, sooner or later will bring in a shelter allowance. Some of the landlords are coming in saying that shelter allowance is the way to go. It makes it more flexible for tenants to go where they can. With the proposal of the tenant protection package here, it tells you that rent control will go. With the lifting of the guideline, rents can go to any level that they want after somebody vacates. Don't you see that there would be an enormous amount of money needed for shelter allowance for people to access affordable housing at the time? I just don't see the sense of it. I don't want to put words in your mouth, but would you not agree with me that this is a ridiculous way to go? Where would we get the money from?

Ms Maloney: Clearly, there's no more money in government coffers for more geared-to-income housing. They've told us that. I can't see you can make shelter subsidies universally available to everybody who qualifies. You would have to set up another bureaucracy to administer this, and I don't think we'd want to recommend that either. So yes, you can't afford to meet the gap. You can never, ever solve everybody's problems here, but the proposals here I don't think will improve low-income people's access to housing they can afford.

Mr Tony Silipo (Dovercourt): Thank you very much for the presentation. I want to first of all agree very strongly with your opening comments and hope that government members particularly listen to your warning when you say it's important that we look for some solutions that make sense to everyone, that we not just

simply come out of this saying, "Well, if nobody's happy then somehow we've found the right answer," because we won't have found the right answer.

I'm particularly struck by the two examples you give about the difference between the market rents and the actual rents that are being paid and the argument you make that this makes it, as I've understood you, really unreasonable, uneconomical for private developers to build. I'd just like you to talk a little bit more about that in terms of what you see happening if the government persists, as they seem to be, with this line of in effect removing the various limits that exist now, the various protections that exist now, and creating exactly this kind of situation where they claim that landlords will be encouraged to build. Your experience would seem to indicate that they won't be. So what are tenants going to be left being able to do?

Ms Maloney: I think tenants will be forced to double up, to live in overcrowded situations and put themselves further and further behind in terms of what they can afford to provide for their families. Their disposable income will get lower and lower for the other things that are important.

I heard a little bit of Chairman Tonks's speech and I can't disagree with what he said about the impact this will have on families. As I say to my tenants, if you don't have a place to live, you have nothing. If you can't start out with some place to live, you can't start to get your life in order. I think it will have really disastrous impacts across the board for our society.

Mr Hardeman: Good afternoon. When we started with the hearing process, the minister pointed out quite clearly that there are more issues that need to be dealt with and to deal with the affordability and availability of housing. I find interesting in your presentation the two examples that Mr Silipo referred to. I understand the problem between the fair return on the investment of the landlord and the market rent that it presently is, but my biggest concern with the two examples is the difference between multiple and high-rise type accommodations, which I suppose, not knowing all the figures, should be the most economical way of providing the housing, and yet in your analysis it is far more costly. Could you maybe explain to me the reason for the high-rise being the far more expensive way of providing the housing?

Ms Maloney: Yes. It's always a surprise. Running a high-rise with elevators, with fire safety systems, with all the regulations, is much more costly to a landlord than to run a simple townhouse project where all you have to do is cut the grass and remove the snow in the wintertime. Your obligations as a landlord of an apartment building are a lot greater and they come with higher costs. You have to heat it; you have to maintain the common elements. It is surprising. Everybody always thinks you're getting better value for money if you intensify the use of the land, but you're not necessarily going to make more money or to do it cheaper in terms of running it.

Mr Hardeman: Further on that, is it because for people in high-rises there are more services provided that that would happen? It seems to me that when you can provide a service for that many people at the same time, that should be the economical way of dealing with it. Are

there are other charges or other costs associated differently with the two types of housing that would make the cost of operations greatly different?

Ms Maloney: Yes. Basically with a townhouse community, a landlord's costs are very simple. They're maintaining the units, doing repairs, clearing the snow, cutting the grass, paying taxes and utilities for the common lights and that sort of thing. With an apartment building you have all of those costs plus you have to maintain the elevators, inspect the elevators, which are required by law; you have to have an emergency fire system. For taller buildings of course you have to have generator systems that have to be inspected. You need onsite staff who are there maintaining and cleaning the building every day, which again is higher cost, and you have again the normal wear and tear. Unfortunately, that adds up. I wish it wasn't that way.

The Chair: Thank you, folks, for coming this afternoon and making a presentation to us. We appreciate it.

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ROBERT LEVITT

The Chair: The next presenter is Robert Levitt. Good afternoon. The floor is yours, sir.

Mr Robert Levitt: Good afternoon. I'm pleased to have this opportunity to speak before you today. I must admit, though, that I was a bit disappointed by the selection of MPPs from the governing party attending these hearings the two previous days. I'm sure they were all competent members interested in this topic, but other than the minister, who attended only for the first day and only for two hours, none was from Metropolitan Toronto, where this week's hearings are being held. The majority of the governing party's members were from areas with tenant populations below the provincial average and none, other than the minister himself, comes from a riding with tenant constituencies in proportions even close to the Metropolitan Toronto averages. Why weren't there any members from Metro the two previous days? This did give me the impression your government is ignoring the impact these proposals will have, especially the impact on the greater Toronto area.

At one time, government policies were guided primarily on the basis of what was in the public interest, with economics setting the limitations and being one of the means towards those goals. These days it seems fashionable among many politicians for the goals to be set based upon the latest economic fads or the demands of special-interest groups, with the public interest getting left behind. But then with tenants making up one third of the Ontario population and more than one half of Metro Toronto's, tenants are the public interest.

Each of you by now will have received a copy of my paper, a critical analysis of the New Directions for Discussion paper and the process that led up to it. My report outlines how the government proposals will not attain their claimed primary goal of getting housing built. Neither will it create jobs in this province; it will cost jobs. It will also cost the provincial and municipal governments money at a time when they are already trying to cut their expenditures.

Just on an economic basis, and ignoring the appreciable negative social effects it will have, vacancy decontrol of rents will be a recipe for economic disaster that will affect all citizens of Ontario, whether they be tenants, homeowners or business owners.

This whole process has clearly been tainted from the start. Greg Lampert, who was commissioned by this government to study how to get new rental housing built in Ontario, candidly admits the intention of the government was to relax rent controls, regardless of the study. Then the study, which was supposed to be the basis for the proposals before us, consulted exclusively with those who would benefit financially as builders and landlords in such changes. Not only did they conclude that they want rent controls removed but, lo and behold, the tenants had too many rights and landlords too few.

The primary fault, of course, lies with the government for consciously deciding to pander to special-interest groups and to show total disregard for the public interest. This still does not excuse Mr Lampert, whose study is full of supposition and provides little evidence of his claims. In spite of the special consideration given to landlords and developers in the consultation process, ultimately proposals were made that only benefit landlords and would accomplish very little towards the claimed goal of creating new rental housing, never mind affordable rental housing.

The Lampert report states that the foundation for his report was the private rental construction report written by landlord and developer lobby groups. Furthermore, a document titled "Did You Know," included with the Ontario Ministry of Municipal Affairs and Housing news release of June 25, 1996, states, "An estimate by the Fair Rental Policy Organization puts the current cost of repairing major structural problems at \$10 billion." Yet on page 2 of the government's Common Sense Revolution booklet above the Premier's signature there is a sentence: "Our political system has become a captive to big special interests." I thought this government was going to avoid this practice, not elevate it to new heights.

Never does the Lampert report, nor this government, question the validity of any of those figures being provided to it by landlord and developer lobby groups. The Lampert report is nothing more than special-interest lobby group promotional literature paid for at taxpayer expense.

One of the few groups the government consulted with in the creation of the Lampert report was the Fair Rental Policy Organization of Ontario. Yet I outline in my document how Mr Philip Dewan, president of the organization and also of the Rental Housing Supply Alliance, not only makes unsubstantiated claims, but has publicly made blatantly false claims, yet the government seems to have an unfailing loyalty to FRPO, an organization whose former chairman was recently released from prison for \$67 million worth of fraud.

Any changes in legislation must be based upon a proper knowledge of the facts and factors, not purely upon political dogma. All aspects of housing must not be examined in isolation. They must be looked at simultaneously to come up with a workable plan. Furthermore,

all groups affected by any changes must be equally involved in consultations, not just certain special-interest lobby groups, as was done in the two meetings with the ministry for the Lampert report. Groups that must be included are advocacy groups for tenants, the elderly, the poor, the disabled, groups for alternative housing, municipal governments and planning departments, small business organizations, plus others.

The mandate for the Lampert report had an extremely narrow focus, but besides creating an inherent bias in favour of these lobby groups on whose own studies the Lampert report was based, it did not look at the effects that suggestions it recommended would have on most sectors of Ontario's economy and society.

A study to determine the social and economic impacts of these changes over the past 13 years in British Columbia since they repealed rent controls, including any effects on the revenues of all three levels of government, the effects on employment and the demand for social services must be fully undertaken, taking into account both the differences and similarities in the situations between BC and Ontario. Not to do so is risking the whole province's future on mere speculation.

In the Toronto Star leaders' debate of April 3, 1995, Mike Harris said: "The current rent control program is not working very well for tenants. We want to bring in a rent control program that will truly protect tenants and give them lower rents. We will replace nothing until we have a superior plan in place to work better."

The proposals before us today will not protect tenants and will lead to much higher rents over time through vacancy decontrol. This plan has no evidence to support its claims and is vastly inferior to what already exists. Proper in-depth and impartial studies need to be done at the foundation, even before any consultation process begins, and all groups need to be included. Only then will there be any basis on which the government can make an informed judgement on these changes, which will not only affect the over three million tenants in Ontario but all the people of Ontario.

Are these proposals for changes in tenant-landlord legislation good for tenants? No. Will these changes get needed affordable rental housing built? No. Are these changes good for retail businesses? No. Will these changes be good for urban communities? No. Will these changes be good for municipalities? No. Will these changes help the province in fighting the deficit? No. Will these changes create jobs? No. Will these changes be good for the Ontario economy? No.

These changes will only benefit landlords, and at the expense of the rest of Ontario, both economically and socially. So why even consider them? These proposals don't need to be modified; they need to be scrapped.

Thirteen years ago, British Columbia's Social Credit government repealed rent controls with promises of a rental housing boom and lowered vacancy rates. The construction never happened. BC's vacancy rates are about the same as Ontario's and the Social Credit Party is pretty much extinct. Now the present government in Ontario is blindly following the mistakes of the Social Credit in BC 13 years ago. Will your fate be the same?

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Mr Marchese: Mr Levitt, obviously you've been following the proceedings. Your concerns are very similar to many others' who have come here. Other than the landlords, you're all united against this and the only ones supporting this are the landlords and the Conservative Party. I've called that collusion. They will deny it, of course, but there is a connection.

It seems to me that what we need to worry about is what tenants fear and what they're saying. Part of what you're saying is that rent control is going to hurt most of you, it's going to hurt most tenants; it will benefit the landlords at the expense of tenants. Is that a fair comment?

Mr Levitt: I go beyond that and I say that the drop in disposable incomes will mean a drop in spending in the retail sector and restaurant sector. This is actually an argument that Bill Davis used over 20 years ago to bring in rent controls, that landlords were sucking the money out of the economy, which was costing jobs and hurting the economy in all sectors.

Mr Marchese: In fact, I made that point on the opening day, when I said that when people end up paying more for rent, the disposal income that normally would have been spent — because this is the sector of the population that's going to spend — if that is taken away to give to the landlord, it's going to further dampen the economy because you're taking money away from all those things that most tenants will buy, that we need, and that will spur the economy. So I have to agree with you on that.

Mr Levitt: And it still won't get anything built. I had a conversation with Richard Lyall at the Metropolitan Toronto Apartment Builders Association and I asked him what was the most important thing and he didn't even list rent controls. I can give you a transcript of the conversation. He listed property taxes, GST and issues like that. He said he's not going to be building.

Mr Marchese: But as you said, Mr Lampert says very much the same thing. They say the rent controls won't do it. But the landlord sees that as a prerequisite. You see, they want it, because they want to be able to jack up the price as much as they can get. But the real story around building is not that, so why are they doing rent control, why are they decontrolling, in your view?

Mr Levitt: I think this government really believes what they're saying. They haven't sold out or anything like that. They really believe from their lack of knowledge that this will work. Al Leach even in the Legislature, before the study had even been completed, said "We will be phasing out rent controls." That was before the Lampert report was even finished.

Mr Marchese: Very true. Thank you very much for coming.

Mr Tilson: Thank you very much, sir, for coming to the committee and giving us your thoughts, notwithstanding you obviously don't like a word that we're doing. But that's fair.

I must say, though, that I represent a semi-rural urban area, the municipalities of Orangeville, Grand Valley, Shelburne, Bolton. Do you know what a lot of those people say about many of the policies of the former

Liberal and NDP governments? They created laws that were strictly for Toronto and they took great exception to many of the laws that were put forward by those governments in the last decade. I will say that the landlord and tenant problem — because there are problems for landlords; there are problems for tenants. Anyone who says the status quo is working is wrong, and if they say it's working, I invite them to come to my riding where there's no question that there are no new buildings being put up. Why is that happening?

I suppose we can get into a philosophical argument as to the fact that the NDP tried to take over housing and created such a bureaucracy it made it almost impossible and not economically viable for people to put up buildings. Tenants don't have choices to move to other locations. These are common occurrences. They're happening in Toronto and other areas, but it's certainly happening in my riding and I must say, sir, I resent the fact that you don't think that I, from a semi-rural urban area, can come and hear the concerns of people across this province. That's what this is. This committee is going to travel to all areas of the province to hear all concerns, not just from Toronto, but all over this province. Because these are serious problems which our government intends to address, and we're going to listen to the people.

I think where you're a little confused is that this is not legislation, this is a paper. I hope that people will come and put forward suggestions as to how to solve these problems and not just say, "We don't like this; we don't like that," that they will come forward and put forward suggestions so that our government can create a policy that hopefully will solve the problems that were created by former governments.

The Chair: Mr Wettlaufer, a quick minute.

Mr Levitt: Can I reply?

Mr Wayne Wettlaufer (Kitchener): He said most of what I would have said.

Mr Levitt: I'd like to reply to that. First of all, my paper does give suggestions. Secondly, just two weeks ago on CITY-TV, it was Mike Harris who said — he was talking about economics — "As Toronto goes, so follows Ontario." So if you kill Metro Toronto, he is suggesting, you're going to kill all of Ontario. So I don't think you should feel resentful; you should be looking at your own policies, or in this case, your proposals.

Mr Curling: Mr Levitt, I want to thank you for your presentation. I'm not at all surprised that you feel suspicious about government not coming through with their promises, or ramming things down people's throats when they've made up their minds before they even have any discussion or any consultation. Bill 26 was an example of that, and many of their colleagues over here who were following blindly to support that didn't even read the blessed thing.

The fact is that what you're talking about, many of the things that are in the tenant package today are things that they may be sitting on in some basement now, writing the legislation.

The fact is that you come forward here and give us your view. We hope they will listen. Many people who bring some rather cogent remarks and very pertinent warnings about what's going to happen have told this

government that if they bring in something called a tenant protection package and a housing strategy and a housing policy, how on God's earth can they attack this huge problem, blame it all on rent control and then say, "We're going to move forward."

That's why they have so many confusing thoughts around the issue here. One minute they're going to protect tenants and they want to phase out rent control, then they want to bring rent control in at one stage when they have a by-election, and then when the tenants face them, they're going to protect tenants with a tenant package.

Therefore, I understand what you're saying and I know you have that concern. I'll give you some moments to respond.

Mr Levitt: Basically, I talk more about the economy than tenants in particular. I think this is going to severely hurt small business. They are talking about creating jobs, and this is going to kill jobs. According to the Canadian Federation of Independent Business, while over the past several years we've been losing jobs — let's not talk about the past few months — but generally we've been losing jobs, the only sector that was creating them was those businesses with under five employees, yet those will be the ones hurt the most by the drop in disposable incomes among tenants. They say they're pro-business, but they're completely ignoring small business, and what hurts tenants does eventually hurt small business and hurt the province.

Mr Curling: As you said, it's not rent control, it's a lack of income for people to have access to affordable housing. They should stop blaming it on the tenants, because you don't have enough money to do this. So we come and pass that back and forth.

Mr Levitt: They haven't even done any independent research. They basically had Lampert rewrite the landlord report, and none of the data has been substantiated, never mind I can't get a copy of the report. I can get a copy of the Lampert report, but not the reports it was based upon.

The Chair: Thank you, Mr Levitt. We appreciate your interest in our process and your presentation here today.

I don't believe our next group has arrived. We have information from their house that they're on their way.

The committee recessed from 1639 to 1653.

KATHERYNA DMYTROW

STEPHANIE DMYTROW

The Chair: Welcome to our committee. You have 20 minutes. If you allow time for questions, they will begin with the government. The floor is yours.

Ms Stephanie Dmytrow: We apologize that we are a little bit late, but there's really bad traffic with the Exhibition in the southern end of Toronto.

We just wanted to make a few points. My name is Stephanie Dmytrow, and this is my mother, Katheryna Dmytrow. My father was also scheduled to appear, but he's not well and he couldn't come today.

The first point is that we feel rent control and the bureaucracy that's entailed by it should be scrapped. What I mean by bureaucracy — for example, I remember one time I was at the ministry and one of the clerks there

explained to me that he spent half a day correcting a two-cent deviation. We believe this is a waste of taxpayers' money and we think there should be changes. We commend the changes that are being made, we're happy with some of them, but we think some are not sufficient, and I'm going to touch upon some of these points.

Two, we believe the needy and the poor should be helped, but rent control is not the answer. We believe government subsidies should be created for people who cannot pay rent at any particular time in their lives, at some critical time, at any time etc.

By the needy and the poor, we do not include the following people whom we have had as tenants. We at one point had a female tenant, an executive, who was making an income of over \$70,000 annually, and her monthly rent was \$290. We had other tenants who were paying the same, roughly, approximately \$300 a month, \$200 etc, who were taking trips to Indonesia. There are electronics, very expensive products, being purchased. We see this when we're throwing out the garbage. We just feel this is an inconsistency and something's wrong with this picture.

Then there is the matter of what is a market rent and what our rents are. Our rents now range from the lowest rent being in the high \$300s range to the highest rent being in the low \$500s range in the High Park area. We have two buildings with 22 units in each building. We're small landlords. We feel that we have very clean, well-maintained buildings in a good area. Our rents do not compare with what rents are in the area. The rents are between \$750 and \$800.

Mrs Katheryna Dmytrow: A one bedroom.

Ms Stephanie Dmytrow: For a one-bedroom; we have mostly one-bedroom units. I know that many years ago the rent was \$400 a month for one room. This has to be changed. Meanwhile, what's happening is that taxes, hydro etc, everything is going up. The increase that's allowed for next year apparently is going to be similar to what was allowed for this year. That doesn't help when other expenses are going up. The claim is that there was no inflation, but the insurance companies say otherwise. They say there is inflation, so they're raising their rates by 3%. It's a problem, especially for small landlords as ourselves.

Then there's the question of repairs. Apparently now there will be some greater flexibility there, but in the past we have put on new roofs, put in boilers, done brick pointing, painted entire buildings. These are all very large expenses, and we've not been able to recoup our costs. I don't know how it's going to work in the future. Certainly I don't assume it's retroactive, I'm not sure, so that really doesn't help with what our current situation is. It might help down the road but it doesn't help with what's happened up to this point. Also, what's not been covered is when apartments or units are damaged by tenants. It's very difficult to recoup those costs. We've found that's a real problem.

This brings me to inspections. If it's something created by a tenant there are no actions taken. However, if it's some paint chipping or some minor detail it's almost harassment. We are being bombarded — there are phone calls to the inspectors, who then come and inspect these

things. I find there's a real inconsistency with regard to even inspections, because I know at one point I was with my mother in Kensington Market, looking at an apartment. It was I think three units in a home. There were rats in this building. There were holes in those floors. Where were the inspectors? Yet they're at our buildings where there's some paint chipping. Bureaucracy for the sake of bureaucracy, they have to put a stop to it.

A friend who is living in a unit on King Street — there are children, not pets, urinating on the carpets there — is paying \$750 a unit. I'm not suggesting that anyone should pay \$750 for a unit in a building such as that, but I'm just saying that somewhere we have to look at what's being provided and what people are able to charge for what is being provided.

Another thing we've found is that subletting has been a real problem. We understand that under the new provisions it will not be allowed. That has been a problem because you cannot interview potential tenants and then you cannot safeguard your current tenants, your good tenants. Sometimes there's a situation with overcrowding. It may not be permanent, but there are too many people in one unit. We found we didn't get anywhere when we would call because it wouldn't be under the jurisdiction of a particular inspector; it would be some other bylaw. I think that should be looked at as well, not just repairs.

Mrs Katheryna Dmytrow: Excuse me, usually they say it's a visit, but a visit, how long can this take? One week, a month or two or three years.

Ms Stephanie Dmytrow: Yes. The rationale behind it is that they're just visiting, but really they're long-term tenants. Half a year is sort of a long visit.

Eviction procedures, notices. Sometimes tenants give very short notice. What's the recourse? There really isn't one. Sometimes they're maybe not your best tenants so you just let them go and that would be it. But there should be a sense of balance there as well, I feel.

1700

Just on a psychological note, I read somewhere something about a new phrase, "dispute resolution." To me this sounds much better. I would like to take the antagonism out of this situation, the whole relationship. I think we should just drop that word "landlord" and just call landlords "owners," because that is what they are: owners of buildings. When we remove hostility, I think it would be both in favour of the tenants and in favour of the owners.

The other big problem with very low rents is that there is simply no cash flow. My father is 72 years old. He has cancer. He has to go in and do plumbing repairs because you cannot lay out all the money; you must have a little bit of a reserve in case something critical happens, particularly with an older building. Our buildings are in good repair. But if you have to repair a roof after X number of years, there's a big cash outlay. Particularly in the past, when you couldn't recoup these costs you were in a corner.

I think rent control is particularly hard on the small landlord. With the new legislation that's coming out, if there will be no rent control for new buildings, that's fine, that's good for owners of new buildings, but it

doesn't really help small landlords and landlords of older buildings, which I know are important because there are people who can only afford to pay X number of dollars in rent. But the onus and the whole brunt of that should not be on the small landlords, owners of older buildings. Somehow the government has to step in there and help out those tenants.

Mrs Katheryna Dmytrow: And landlords.

Ms Stephanie Dmytrow: Yes. It's difficult to make ends meet. The argument sometimes is, "Well, there is a gain when you sell a building eventually somewhere down the road." Meanwhile that doesn't put bread on the table and it does not pay for repairs, especially if they are large.

Finally, I would just like to say that we've come today because we don't have a lot of units but we feel it's very important that everyone's voice is heard. These are our main concerns. We feel that the needy and the poor should be helped; we just don't feel that rent control is the route to go to achieve that.

Mrs Katheryna Dmytrow: There are a lot of people who are working and they're collecting welfare.

Ms Stephanie Dmytrow: Fraud is another problem. We had welfare fraud. There is a lot of fraud with apartments. As you know, people collect welfare, they work, and then they're in apartments which are really undervalued. That is just not right. That's what we have to say.

Mr Maves: Thank you for coming in and fighting the traffic to make your presentation today. I was struck by your first comment about being in the ministry office and the person working there spending a whole half-day working on a two-cent exchange. We had a gentleman in here yesterday telling us about a landlord spending \$40,000 and the ministry spending \$150,000 to correct a \$35 dispute. I think it's that type of bureaucracy that you've witnessed and that the previous person told us about that we're trying to address.

Many folks come in here and tell us about these astronomically high rents and the astronomically high rents we're going to get. You mentioned some particularly low ones. Could you tell us what your rent ranges are again and explain to me how it is that they're so low.

Ms Stephanie Dmytrow: I think the lowest rent is \$395, if I'm not mistaken. I'm sorry if I don't know it to exactly the dollar. Is it \$395?

Mrs Katheryna Dmytrow: We bought the building 10 years ago, and the rent was very low to begin with. I think you should know that. When the controls came, the rent was maybe \$170 or \$180 or even lower. So how do you expect it now to be \$800 or \$900?

Mr Maves: What's the highest rent that you have?

Ms Stephanie Dmytrow: I think it's about \$525, perhaps \$540.

Mrs Katheryna Dmytrow: It's \$530. There are three rents over \$500.

Ms Stephanie Dmytrow: But that's only two or three of the rents; the rest would be in the \$400 range.

Mr Tilson: Can I ask a question?

Mr Maves: Sure.

Mr Tilson: On this issue of chronically depressed rents, and that was a big topic that came up with the

NDP pieces of legislation, have you got any suggestions as to how we could solve that? Obviously, if you were to take these chronically depressed rents and just say, "Here's the going market rate," that would create great problems for tenants. Have you got any suggestions as to how we could solve that?

Mrs Katheryna Dmytrow: Yes. How about the taxes?

Mr Tilson: That's an issue we're working on too, but I'd like you to comment directly on —

Mrs Katheryna Dmytrow: It doesn't balance.

Ms Stephanie Dmytrow: I think it took a lot of dollars and it cost a lot of money to run the former program, the rent control program. I would take those dollars and put them towards those tenants who need the extra help. That's what my suggestion would be.

Mr Grandmaître: You say that your average rent is between \$300 and \$500 and most of your apartments or units are one-bedroom apartments.

Ms Stephanie Dmytrow: Yes.

Mr Grandmaître: And you believe that the present legislation should be scrapped. If it is scrapped tomorrow morning, how much would you charge for your apartments or units?

Mrs Katheryna Dmytrow: What people can afford to pay in this area.

Ms Stephanie Dmytrow: Something that's comparable in the area. I don't think it would go as high as — I mean, \$750 to \$800 is the average range, and it would depend on the tenant. We have some older tenants.

Mr Grandmaître: It would depend on the market as well.

Ms Stephanie Dmytrow: Yes. It would depend on our expenses also and what we have to cover. It would take a full analysis to do that and I really can't say, but I know I would be charging more than \$300 and \$400.

Mr Grandmaître: Three hundred dollars seems to me very low, very cheap.

Ms Stephanie Dmytrow: Because it was rent control and it was very low to begin with.

Mr Grandmaître: Have you been taking advantage of the old legislation and increasing your rent annually by 2.4%, 2.5%, 2.8%?

Ms Stephanie Dmytrow: Yes. That's with the maximum allowable increase. That's what the total is for that. It's just one unit. That's the lowest unit.

Mr Grandmaître: Also you claim that you had to replace your boiler, your roof, do brick pointing, and you weren't compensated for this?

Ms Stephanie Dmytrow: At that time it was very difficult. We were told by consultants that a lot of bureaucracy is involved, it takes a very long time and it would be very difficult to recoup our costs. It takes a lot of energy to get organized and you have to pay money. If we're not really making any money, we're just losing more money, why would we do that? We were advised not to at the time.

Mr Marchese: I'm not sure you were paying those consultants, but if you were, you should fire them. They weren't very helpful to you, obviously. Just to blame the bureaucracy for not going through to recovering your cost is a real shame. First, the fact of the matter is, you were allowed 2.8% and an extra 3% if you could show that

you have other extraordinary repairs. In this case you did, so for this consultant — I don't know who that person is — to tell you not to go through with it is improper. Second, removing rent control will not solve the two-cent problem that took the civil servant half a day, as Mr Maves said. It doesn't deal with that. That's a different problem the government will have to continually deal with, but rent control is not the problem.

The other problem you raise is that it's difficult to make ends meet. I understand that, we all do, but remember this: A third of the tenants, there are a lot of them, make less than \$23,000, and a substantial majority of those who are unsubsidized, with low to moderate incomes, pay more than 30% of their income on rent. I understand your problem, but I'm equally concerned about those poor people who are going to have a hell of a time.

What they haven't told us is, with this decontrolling of rents, removing of rent control, what's the cost going to be to the tenants? They haven't done that study. Is it going to hurt a lot of people? They haven't said, they never say that, but I think it's going to hurt a lot of people, and that's the kind of question I want to ask them: Have they done the studies to show how much rents are going to go up, and whom is that going to hurt? Do you worry about that for some of those people?

Mrs Katheryna Dmytrow: Excuse me. You know what? It's a lot of old people. I believe it. I'm older too; I'm old too. But you how hard I work? I work very hard.

Mr Marchese: I appreciate that.

Mrs Katheryna Dmytrow: Okay, you appreciate that. Then I have young people and they're not working or they're working and collecting welfare. What do you say about that?

Mr Marchese: But I agree with you. That's a different story.

Mrs Katheryna Dmytrow: You don't agree with me.

Mr Marchese: No, I'm sorry, I do agree with you. If they're cheating on welfare, they should be out. They agree and we agree, but that has nothing to do with rent control, ma'am.

Mrs Katheryna Dmytrow: Excuse me. Who's going to put them out? The tenants have rights. Where's my right?

Mr Marchese: I understand. It's not rent control, though.

The Chair: Thank you very much for coming to present to us today. We appreciate your interest in the process. We're now recessed until 6 o'clock.

The committee recessed from 1710 to 1800.

CORTOR MANAGEMENT LTD

The Chair: Our first presenter tonight is Helen Zavitzianos, president of Cortor Management Ltd. Good evening. Welcome to our committee.

Ms Helen Zavitzianos: Honourable members of the standing committee on general government — there are only gentlemen here, no ladies, in the audience — as you have been told, I'm a principal in a small management company that looks after residential buildings ranging from a high-rise to a single bungalow.

I have also served as a representative of the small landlords on the Residential Rental Standards Board, which was disbanded by the NDP. The standards board was set up to help the province in its goal to formulate and enforce an acceptable standard of maintenance to preserve Ontario's housing stock. Take note that for structural concrete deterioration — balconies, garages — there's no reasonable preventive maintenance you can do.

The present government is commendable for wanting to ensure the enforcement of maintenance and repair standards for the benefit of the tenants and for the province's interest in the residential stock. All this is excellent. It is the proposed method of enforcing the standards that is highly objectionable.

You propose to enforce maintenance standards by fines. If you believe that fines are an effective method to obtain compliance, so be it. The fine can be paid to the municipality or the province, in the form of taxes, assessment, what have you, but heaven forbid, not by rent reductions. Reducing the rents is counterproductive. Number one, if a landlord is short of cash, rent reductions will make it even harder for him to comply and also will make it impossible to get a loan from the bank. With a reduced rent roll, how can you get the money?

The province wants to abolish the registry. If you impose rent reductions, you have to set up another bureaucratic operation to keep track of the reduced rents. Keep it simple. Let the municipality fight it out with the landlord. Do not involve the tenant and the landlord in an antagonistic situation. It promotes acrimonious confrontation tactics. In another vein, an example of enforcing a new standard is the fire code retrofit. That is currently implemented successfully without imposing rent reductions.

The second way you want to impose compliance is that you also want to eliminate the notices of violation and work orders. Should those be abolished, I strongly believe that will be the greatest assault on our democratic principles and civil liberties. Such a course of action is totally unnecessary and totally unacceptable. It debases both the municipality and the landlord. It throws our whole tradition of an honourable dialogue into the domain of a jungle.

The elimination of notices of violation and work orders is neither prudent nor justified. Empowering the building inspectors with such sweeping, dictatorial policing authority to slap on fines is utter lunacy. It smacks of communism. It is a practice that invites abuse and corruption. Landlords, like any other Canadian, should enjoy the privileges bestowed on all of us by the Canadian Charter of Rights and Freedoms. Landlords are entitled to a reasonable amount of time to comply with any infraction of maintenance standards and bylaws. The present process of notification should be maintained.

In conclusion, and by no means accepting the remaining of the government's proposals as perfect, I would like to suggest the government invite for a round table discussion representatives from tenants, municipalities and landlords to review your proposals, clear misunderstandings and reach compromises. Separate submissions from tenants, landlords and municipalities are useful but antagonistic. A round table discussion, on the other hand,

promotes consensus, accommodation, respect and understanding, and can formulate courses of action that will cause the least friction and damage.

These are very difficult times. Landlords are going bankrupt — St James Town, Bramalea, all the buildings you see for sale because of foreclosures. Also, tenants have great difficulty paying the rent. I believe it will get worse before it gets better. We need the understanding of facts and the cooperation of the governments — all levels — tenants and landlords. We need workable laws to regulate the rental residential industry so as to deliver an effective, fair and dynamic service.

I thank you for listening and I wish good luck to us all.

I still have three minutes and I would like to add something extra. First of all, personally, I would say for my company that we have no axe to grind because we have never received in the 25 years I have been in business a work order. We have very satisfied tenants. We get all sorts of appreciation letters, and I enclose three. One is from a single mother on welfare who hasn't paid some rent for over a year, and she's still a tenant there.

Also, I would like to make a comment about today's article in the *Globe and Mail* where the tenants complain about exploitation by the landlord, the problems that would arise. I would always say that the 20-80 principle applies to landlords and to the tenants, but the majority of the landlords today cannot charge the maximum rents they're entitled to. The tenants cannot pay. We cannot charge what we're entitled to. It's no use having them there and evicting them. Also, who is exploiting? Our two-bedroom apartments, which are very spacious and wonderful, go for a maximum of \$760 a month. In my mother's senior citizens' apartment, the two-bedroom goes for \$847 a month.

I think this is all I have to say. I still have one minute, but I'll turn it off. I'm open for questions.

1810

Mr Grandmaître: Thank you for your presentation. On page 1 of your presentation, "Reducing rents is counterproductive," the present legislation doesn't talk about reducing rents. Can you amplify or give me more —

Ms Zavitzianos: It is my understanding that the fines should be imposed on the landlord in the form of reduction of rents. I don't think that is wise, for the reasons I provided.

Mr Grandmaître: For violations.

On page 2, you say that a round table discussion should take place. We were told by the government that a great deal of consultation took place with tenants and municipalities and landlords, especially tenants and landlords, and that's the best piece of legislation they could come up with.

Ms Zavitzianos: As I have told you, I was on the standards board. The Liberal government set it up. You had representatives from the landlords, the municipalities, the tenants and the province. The province and the municipalities were at loggerheads, and the tenants and the landlords, and you came to some sort of an understanding. It was illuminating to see the consensus and the agreements. We had difficult times. I find when you get

submissions from the different parties, the landlords, of course, when any piece of legislation comes out, are afraid they're going to lose their top dollar, their bottom dollar, whatever. For the tenants it's their home and they're afraid to lose their home either for excessive rent increases or living in a place that is not adequately maintained. They have very real fears. So they come and they attack with very unreasonable demands. I think if you put them face to face, sometimes you could get a dialogue with some more meaning.

Mr Grandmaître: You also say that tenants have a great difficulty paying their present rent. Do you believe that by abolishing rent control some landlords will take advantage of the lack of legislation and increase rents by ridiculous amounts to make it more difficult?

Ms Zavitzianos: That they cannot do because there is the market, which doesn't allow you to. But there are a lot of depressed rents and there will be substantial increases there.

Mr Marchese: Thank you, Madam Zavitzianos, for coming. You're to be commended for not having ever received a work order. Obviously, you're one of those landlords who maintains the building well and wants it that way.

Ms Zavitzianos: I think the majority of the landlords have an investment and will do everything they can to preserve their bread and butter.

Mr Marchese: I understand that. We don't hear that from many tenants, so it's nice to know that some of you want to do that, but many tenants obviously have been finding a lot of landlords where that is not the case. It brings me to the point of the elimination of notices of violation of work orders. You're saying, "Please don't do that," where you argue, "Landlords are entitled to a reasonable amount of time to comply with any infraction...." That sounds fair. The problem I guess is where you have a fight between tenants and the landlord and it's endless and it never gets done. What is a reasonable time, do you think?

Ms Zavitzianos: It depends on what it is, because when you have the tenant call the municipality without having informed their superintendent or the management, and they arrive there, if it is a leaky tap, then it's done immediately. If the roof is leaking and it's wintertime, you have to wait for the first sort of thawing day. You have to wait some time. There are things that cannot be done. If they have potholes in the parking lot, it cannot be done in the winter, period.

Mr Marchese: I understand, although for the most part, from what I gather from you, if you notice a problem, you get it fixed, and you probably do it very quickly. You don't seem to be the type of landlord who's going to wait around for a couple of months or a year or whatever it takes to fix a problem. That's my sense of the way you are as a landlord. Not everybody's like that.

Ms Zavitzianos: It depends on what it is.

Mr Marchese: I had a question much similar to the Liberal member's, and you're saying to his question that they won't be able to raise the rents because the market won't allow it. If that is the case, if you're right, why do we want to remove rent controls? Because that's effec-

tively what they're proposing through decontrolling. Why do we remove them then?

Ms Zavitzianos: I don't talk like a landlord, but I don't think it would be politically safe to remove them entirely because the low-income tenant would feel threatened, and I think it's nice to have security. A home is a sacred place. Whether it's real or imaginary, you have to give the occupant some sense of security. It's a very unstable and cruel world.

Mr Hardeman: Good evening. I thank you for coming in and I'm quite impressed with your attachments to your presentation with letters from tenants whom you have served. It seems that you take your job very seriously and do a good job of it. Some of us could take lessons in serving our clients that well.

I also want to point out that the document we're referring to today is a discussion document, to hear what the public thinks of it, and I appreciate the fact that you've brought out a couple of the proposals in it that you have concerns with. I just wanted to question it and get your opinion on whether it's an understanding situation or whether you do really believe it's wrong.

The first one is the issue of the fines being put forward in the form of rent reduction. I don't believe the discussion document proposes to do that. The discussion document is that fines can be imposed and rent reductions could take place for services that were not provided. If that's the case, would you not think that was a fair approach? If the apartment had been rented based on a swimming pool being available, and for six months the swimming pool was not available, would it not be fair that a rent reduction was applied because that service had not been provided?

Ms Zavitzianos: I think that would be reasonable in that respect.

Mr Hardeman: Just to clear that up.

Ms Zavitzianos: But there'd be very few things, services.

Mr Hardeman: The other issue is that of the work orders as opposed to it being an immediate penalty for an infraction. I think the present system takes a long time. If we have an unwilling landlord and a significantly demanding tenant, the process can take a long time to accomplish something that should not take long to do. Part of that is because even after the property standards officer has looked at the problem, they can still do nothing. They can issue the work order and now we have to give a certain length of time for this to be accomplished. If we want to be resistant, of course, the landlord can then take to the final length of that time to do it when it was something very simple.

Would you not think it may be appropriate that a property standards officer, being an impartial third party, would look at it and if it's a serious thing that could be fixed immediately, he should have the right to be able to make him do that so we wouldn't have to go through that long-drawn-out process of work orders?

Ms Zavitzianos: It's not that long, because it depends on what the infraction would be. You get a notice, it can be done in five days. Once, I don't know what happened, some service, we had a notice that we have to put it back in service in 24 hours. It had something to do with — I

can't remember — the gas, Consumers' Gas, and of course Consumers' wouldn't do it. We had to get — well, it was done. But, anyway, if it is something serious, you have to do it within hours, and you do it.

The Chair: Thank you, Mr Hardeman. Thank you, Ms Zavitzianos. We appreciate your attendance here this evening and your input into our process.

Our next presenter is Andrea Addario.

Pam McConnell, city councillor? She's not here either.

I guess we will recess until such time as one of the next two presenters arrives, so please don't go too far away.

The committee recessed from 1821 to 1840.

PAM MCCONNELL

The Chair: Our next presenter is Pam McConnell, city councillor for ward 7. Welcome, Ms McConnell. You have 20 minutes to use as you see fit. Any question time you allow would begin with the New Democrats. The floor is yours.

Ms Pam McConnell: If I could ask a couple of members of my community to come and join me at the table, they'll be here to answer some questions, and they're all here. If you'd come up and bring a chair, please.

Members of the committee, I appreciate very much being given the opportunity to speak to you about the provincial government's consultation paper on tenant protection legislation. I, as you have heard, am the city councillor for ward 7 in the city of Toronto, and as you can see, I've brought with me some of my constituents, who are also, as it happens, constituents of the Honourable Al Leach. They are the residents of St James Town, Canada's most dense urban community, which consists of 18 high-rise rental apartments. St James Town has 14 buildings that are private rental and four which are Ontario Housing high-rises. St James Town has a population greater, if you can imagine it, than the town of Lindsay, more than 18,000 residents.

On Monday you received from our mayor, Barbara Hall, the presentation from the city of Toronto on the government's consultation paper. I wholeheartedly endorse the city's position, and as a member of the city's rent control subcommittee and as a representative of these St James Town buildings and constituents as well as many other tenant buildings within my ward, I have been very involved, as you can imagine, in the last year on this issue. Meetings have taken place at city hall and in my community, newsletters written and petitions and postcards collected, and very much debate and work have been done on this matter. And tonight, here we are trying to sum it all up for you in about 10 minutes.

I want to do two things so as to not simply repeat the city of Toronto's earlier presentation.

First, with the help of my friends tonight I want to paint a better picture for you of life in a tenant community under the current tenant protection legislative regime and then ask how anybody could support weakening that legislation. During the question time, I will be asking my friends to answer some of your questions about the real impact for them of having less protection than they have now.

Second, I will pick up on one element of the city's position that needs the urgent attention of this committee and which is critical for St James Town tenants; that is, asking for provincial legislation to give the city the authority to establish and enforce operating performance standards for elevators in apartment buildings.

For some of you, the discussion about rent controls and tenant protection legislation may be a discussion about market forces and less government regulation. Our perspective is grounded in the reality that the majority of the households in the city of Toronto are tenant households, maybe 63%, and in St James Town, 100% of the households are tenant households. So for us, it is a community and its future and how to raise our children that is really at stake here. Seniors who want to live at home as long as possible and have to worry daily about higher rents and extra charges and sometimes no hot water, garbage in the halls and elevators that never seem to come also care about this debate. The apartments are not, for most people in St James Town, just a temporary kind of market choice.

Imagine politicians in this building amending bylaws so that suddenly a community the size of Lindsay is instantly made to feel insecure and depressed about their ability to continue to live in their very own homes. In some buildings in my community, tenants under the current regime are routinely being charged for parking spaces when they don't even have cars. They're being charged illegal charges for utilities such as an air-conditioner or a little apartment-sized freezer. They watch in horror as new landlords suddenly get rid of more than half of the building's cleaning staff and the garbage overflows on every single floor every single weekend because there's nobody to empty the garbage chutes. Rats start patrolling the halls, and perhaps to save on some of the utilities the ventilation is routinely turned off, even in the garbage rooms, even in the bathrooms as well as in the hallways. Hot water is not always available more often than not in some of our buildings. Burned-out lights take forever to be replaced in the hallways and underground garages and elevators are totally unreliable. Fire hoses are never rotated, extinguishers are never checked and, in one building in my ward when I sent in the fire inspectors, 43 out of 47 extinguishers were missing.

It does not follow that this is inevitable. Other buildings of the same age in our community are not being rapidly run down by these kinds of management practices. Other tenants aren't being charged illegally and they are not being served legal papers for evictions on minor lapses and sometimes clerical errors at the drop of a hat.

What is to be done? In Toronto's rental market, to assume that thousands and thousands of households could suddenly leave and move to comparable accommodation owned by a more respectable, responsible landlord at the same rent is laughable, not to mention that they should not be forced from their homes and from their neighbourhood. If the community also has a significant component of recent immigrants, as we do, who may not have the knowledge of our laws and the language proficiency to get the justice they deserve, then things will be even more heart wrenching.

Under the current legislative regime, and with a great deal of effort, tenants can oppose the illegal charges and complain to their municipalities about property standards' violations and try to get rent increases halted until work orders are completed by the landlord. It's not a perfect system and not every tenant knows or achieves their rights or has access to legal help or has the energy to fight every single stratagem of a determined landlord. It can take years for municipalities to pursue negligent landlords on building violations. But we've learned a lot from the infamous West Lodge experience, which I'm sure you've heard about in our city of Toronto, and we try to intervene quicker so that buildings don't deteriorate so fast. We've learned to use the OPRI, or order preventing rent increase components of the rent control legislation.

It is unimaginable to me and to these constituents who sit in front of you from St James Town and from all the other rental buildings in my community that this situation could be made even tougher for tenants: No rent registry to check on previous rents and operating costs to see if the landlord is cheating; no rent controls if I move; rent controls can go up if the municipality work orders aren't completed. If the city does manage to get the work done and puts it on the property tax bill, my rent goes up anyway.

Enough already. In St James Town there isn't much discussion about the market forces or the ideological blinkers that underpin the proposals for these changes. In St James Town the discussions are in English and in Tamil, they are in Tagalog and in Chinese, in Somali and Korean and Spanish and they are talking about all of these things. They know that it will be in St James Town that the new legislation will hit the pavement, so to speak, with very few words and with all the force and unyielding impact of something thrown from the rooftop of one of their 34-storey buildings. Discussions won't be of much use to them then.

But there is one opportunity that is presented to you today in the government's consultations which, with your help, could result in solving a long-standing problem. I speak of the elevators in apartment buildings. Did you know, for example, that a builder is not required to provide an elevator in apartment buildings and that if a landlord has one, the municipality cannot require the elevator to operate at all? The province, to be sure, can inspect an elevator to see if it is safe, but our building inspectors cannot force a landlord to turn it back on or to run it efficiently. Sounds unbelievable, doesn't it?

To grasp what this means in real terms of St James Town, let me seek your indulgence for a moment to give you what I draw as an analogy. I have to take you back again to the city of Lindsay, my device to ensure that this painting of St James Town is really in the proper perspective.

Imagine that the residential streets of Lindsay all have gates at each and every intersection and that these are operated by the push of a button once a vehicle or the pedestrian leaves the home and goes to the corner. Sometimes the gate opens very quickly, sometimes it takes a little while and sometimes, inexplicably, one waits for half an hour or more. When each gate does open, it only stays open long enough for a few of the neighbours

at a time to whip through. Sometimes the gate's locked shut and later you find out it's out of order. Sometimes there are municipal officials keeping it locked for half an hour or an hour at a time because some other municipal works truck is going to be passing through and doesn't want to have any obstructions. When you turn around and walk to the other side of the block, there's an even longer lineup and you wait for a long time before your turn comes to leave.

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Some neighbourhoods in Lindsay don't have much trouble with their gates and you find yourself getting kind of defensive. Why are you late for work again? Some days you give up and you're walking your small child to school because the delay is too long and, besides, you don't want to risk her never making it back at lunchtime because of the delays. When should you start worrying after school when she isn't home right away? You might not find her right away if she's stopped at a gate a couple of blocks away. It's hard to arrange to bring your ailing mother over for Sunday dinner; she can't stand waiting too long. You certainly don't send your daughter to the corner store for milk just before dinner or for a package of disposable diapers for the baby when you're running out for the evening.

It's not as if you can pick up and move to another neighbourhood. Even if the rest of the family could cope with the leaving of their friends and their neighbours and their classmates, there aren't really many empty houses in Lindsay, and there's no guarantee that the new neighbourhood won't have the same old gate problems next year that you have this year.

Of course, there's always election time, and you and I both know that you can vote in better politicians and get them to hire more competent staff and put an end to this deterioration of the equipment and the sloppy management practices. After all, the entire community life, even the safety of its residents — because, after all, gates make no exception for ambulances; people who need ambulances still have to go down gates, or elevators as I'm describing it — not to mention the entire functioning of the economy in Lindsay is affected. That's exactly the circumstance here.

Unfortunately, the town of St James Town is not a democracy. There are no elected officials who control the staff who maintain and use the gates. Now, I'm an elected official who's almost but not totally helpless to respond when my constituents call me with the gate or the elevator complaints I have just outlined. But you can give me and my staff that I work with at the city of Toronto the power to respond effectively. You can open in effect the gates of the town of Lindsay.

Like the city's bylaw on the provision of heat in rental units, we could establish together some reasonable performance standards to ensure that apartments in the sky have the same access to transportation down to the ground and back up again. We don't need to control the manufacturing of elevators any more than we need to control the manufacturing of furnaces, but we do need to make sure that they are kept in good repair and that they are actually running at a reasonable frequency for the number of people they are required to transport. Our

inspectors could then respond to complaints about lengthy delays or non-functioning elevators and require, once and for all, landlords to fix these problems.

Timing is absolutely essential. The provincial government has said that when it tables new tenant legislation it may give municipalities some more powers to enforce the maintenance standards. Elevators have not been mentioned in this paper except by the city of Toronto. A draft bill on this was submitted previously to the Minister of Consumer and Commercial Relations by our city and we have included this in our request and presentation to your committee.

I would ask that the government please include in the bill presented for first reading in the Legislature this particular amendment. Please help the residents of St James Town to enjoy the same freedom of movement and the opportunity to show up to work on time and to go to school on time as the good residents of Lindsay.

I urge the committee to abandon the proposals that are outlined in the tenant protection legislation, New Directions, and instead to work with our tenants and their representatives as well as landlords, to develop a much more comprehensive housing strategy. The lives of 18,000 people in St James Town, not four miles away from here, depend on your decision. Thank you very much.

Mr Marchese: Ms McConnell, thank you very much for your presentation and to the other tenants for coming. I can't imagine a whole community of people having to suffer through such bad management practices. We know that there are good landlords. We heard from one who was just here earlier, Helen Zavitzianos, who's just an excellent person in terms of how she treats her tenants. But from what you describe in this community, that's not the same treatment you're obviously getting. On top of that, you'll soon be dealing with a greater anxiety and that is decontrol of the rents.

Now do you feel that somehow taking away those controls is going to help your community in any way — any one of you — or will it add to the anxiety that you're already suffering? You're already suffering many of the problems, having to deal with a landlord who's not responding to the problems you've got, and now you're going to have to face another problem. If you move, your rents are going to be increased somewhere else, so you won't be able to find better accommodation somewhere else. What is your sense of all this?

Ms McConnell: I think what you're seeing are nodding heads here. These are the exact concerns of all of our tenants within St James Town.

Mr Marchese: I wish you luck and I hope this government responds.

Mr Hardeman: Thank you, councillor, for your report. I recognize that the start of the report generally deals with the situation as it exists today in St James Town, the problems residents are having and the problem with lack of maintenance and so forth. I wonder if you could give us some indications other than the better rules or more autonomy for local municipalities to deal with the enforcement of property standards; if there are some things you could recommend that could be done, that need to be changed, to improve the lives of people in St

James Town. Looking at this whole package as something beyond just the issue of the rents, but about the living conditions of these people, what could we be doing in this legislation to improve that part of St James Town?

Ms McConnell: I think you could be saving the current legislation that we have that allows tenants to go forward and to get rent abatements when landlords do not adhere to their responsibilities. I think that many of these tenants are just about to go through that process. It's difficult enough to do it as a group. To do it individually, I believe, is impossible. These are the tenant leaders in some of the buildings, and it has been hard enough for them — hasn't it, for you? — to even be able to talk to other tenants within their buildings.

I think that rather than try to eliminate some of the protections they have, you need to strengthen those. The abatement issue is a very important issue. The only thing that makes landlords pay attention when they are poor landlords, not good landlords, is when you ring their rent bell and when you say, "Forget it."

Mr Grandmaitre: I want to talk about building inspectors. I can recall, and I'm sure Mr Tilson will recall as well, when Bill 120 was introduced building inspectors from Toronto were asking for more power to enforce the maintenance standards bylaw. What would be your backlog in the city of Toronto as far as maintenance standards are concerned?

Ms McConnell: I'm sorry, I don't have that answer for you and I can't wing it off the top of my head. What I could say to you with regard to that is that we continue to have very serious problems in places where landlords don't adhere to the standards. As long as landlords are playing the game fair, then this system works okay. It is when you spend your time with a landlord that is running always around you — and that's what happened to us at West Lodge. It took us money and effort, full-time inspectors to be in those two buildings time after time after time. So you're looking at two different mechanisms. One is, how's it working if things are going along okay? It's not that bad. How's it working if things are not going okay? It's awful.

The Chair: We appreciate you and your folks coming here tonight and participating in our process.

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ASSOCIATION OF CONDOMINIUM MANAGERS OF ONTARIO

The Chair: Our next presenter is J. Robert Gardiner from the Association of Condominium Managers of Ontario. Welcome, Mr Gardiner. The floor is yours.

Mr Bob Gardiner: My name is Bob Gardiner. I'm a lawyer at the firm of Gardiner, Blumberg. I act primarily for condominium corporations and boards of directors, so I'm here today to speak on behalf of the Association of Condominium Managers of Ontario, the legislative review committee. Thanks for the opportunity to talk about the tenant protection improvements.

The Association of Condominium Managers of Ontario, ACMO, is the only organization in Ontario dealing with condominium property managers' concerns. It has 400 members, of whom 200 are property managers,

and about 200 of whom are condominium directors and professionals and building trades representatives. It has established an accreditation program for condominium managers, has various publications and educational seminars, and is currently involved in changes that are proposed to the Condominium Act.

Property managers are on the front line when problems happen in condominium corporations, so they have a concern about the impact of the proposed tenant protection legislation in one particular circumstance. I would just point out that condominium corporations are landlords in some cases for superintendent suites in their buildings or for situations where they lease common-element parking spots or guest suites or lockers and sometimes they also lease out business premises. All of those situations are basically well provided for, and I guess I would say that probably most of the points that are being considered in the white paper would affect condominium corporations in the same way they would affect other landlords and tenants. So we're not here to make specific comments on other parts of the tenant legislation. Our focus is on the issue of conversions.

The reason for that is that on page 10 of the white paper there's a reference to security, tenure and conversions which indicates that it's contemplated that conversions of rental buildings into condominiums or cooperatives would no longer require municipal approvals. That issue in itself is not a concern of ours. I'm sure that you will all deal with that in your wisdom in so far as to whether or not it's appropriate for municipalities to regulate when conversions take place. But we want you to consider the implications of what will happen if you do remove the requirement of municipal approvals of conversions from rental to condominiums, because basically that will likely open up the floodgates of people who would like to make those conversions who've owned buildings and who would now like to change them into condominium buildings. There are various market forces which come to bear which make sense for someone who owns particularly an older building to convert it into a condominium corporation, especially since they're in a much better competitive position than the builder of a new condominium corporation who has to fight their way through more expensive building costs these days, the payment of GST, the Ontario New Home Warranty Plan enrolment requirements and other things of that nature.

Our concern is on behalf of the purchasers of units and on behalf of the condominium corporations that result once a conversion takes place, because we're concerned that there will be insufficient reserve funds for the condominium corporations in conversion situations much of the time, that technical audit reports may not be prepared, that the Ontario new home warranty protection would not apply to conversions, and that disclosure statements wouldn't necessarily inform purchasers about existing building deficiencies and the underfunded reserve funds.

Let me give you an example. Our firm acts for a condominium corporation that is now an owner-directed board of directors; it has taken over from the declarants. A lot of the purchasers have just bought within the last year. There was no disclosure of the nature of the building deficiencies or the underfunded reserve fund.

There was no reserve fund study conducted. There was no technical audit study done by the engineers to find out what the building deficiencies were. There was no Ontario New Home Warranty Plan protection.

A number of purchasers bought their units, and, like most people who buy in condominiums, they had no way of being able to tell what was wrong in the building; it's very hard for an individual to ever find that out. When the new board of directors was appointed, they hired some engineers and they found out \$750,000 worth of repairs were required for the roof and the balconies. So people who had just bought this year or within the last several months now find that they have to fork out \$14,000 to \$18,000 per unit to pay for these kinds of repairs.

Our first concern I'd focus on, then, would be the reserve fund. Under section 36 of the Condominium Act, at the present time condominium corporations are required to establish a reserve fund which provides for the major repair and replacement of common elements, including the expected costs, when components of the common elements break down, of repairing those. Of course, it's the unit purchasers who have to pay for those repairs by their contributions to the reserve fund. The problem is that there's nothing set out in the present Condominium Act that says that declarants have to fund that reserve fund properly; that's an obligation of the condominium corporation and its owners.

In this situation, you have a case where the owner of an existing rental building who converts to a condominium doesn't have to set up a reserve fund properly. He probably has aged rental stock and in many cases may not have kept it up to a good quality of standard of repair and may be tempted to simply slap a coat of paint over the rust to flog units and make money at the best price. That won't happen in every case, but it's likely to happen in various cases. In the past, where municipal approvals were required in situations where there had been sort of a gate as to how many conversions were going through, that situation was not as bad as it would be if those approvals are removed.

The issue we have is that we're not trying to tell you to stop the removal of municipal approvals; if you think that's a wise thing to do, go ahead and do it. We're just saying that if you do that, then the basic problem needs to be addressed that in conversion situations certain things should be done.

The first of our recommendations, at the top of page 4 of our brief in bold type, says that in the case of a conversion, the Condominium Act should be amended to require conversion declarants to obtain a reserve fund study by a prescribed person; that could be an independent engineer or an architect. The study should be on behalf of the condominium corporation, and the reserve fund study should be done before the condominium corporation is registered.

Our second recommendation would be that conversion declarants should be required to ensure sufficient funds are currently on hand in the reserve fund. That could either be their own contributions or they could be obtaining that from purchasers. But when people buy into a condominium corporation, they should know what they're

buying into, they should have some idea of what kind of repairs they'll have to do and what they'll have to fund out of the reserve fund. So we're saying that when someone does a conversion, they should at least have to make sure sufficient reserve funds are on hand.

Our third recommendation has to do with the technical audit reports. There are currently proposals which are being considered to amend the Condominium Act to require technical audit reports in the first year of a condominium corporation. That's an engineered study to find out what the construction deficiencies are in a high-rise building or a townhouse. That would often be used as a basis for a claim to the Ontario New Home Warranty Plan. It's something that is not currently a requirement of the Condominium Act, but we're recommending that it should be. Particularly in the case of a conversion, we're recommending that the Condominium Act should be amended to require conversion declarants to obtain a technical audit report on behalf of the condominium corporation, prepared by a prescribed person. It should disclose all of the building deficiencies, not just those limited by ONHWP, and it should be done before the condominium corporation is registered. Also, the conversion declarant should be obligated to complete those repairs prior to selling the unit. That way, the purchaser of a conversion building is in the type of situation that would be similar to buying a newer building if the building was built properly.

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Our fourth recommendation would deal with the Ontario New Home Warranty Plan. At the present time, that doesn't cover a conversion situation. The limited warranty that a purchaser can get under the Ontario New Home Warranty Plan, while not ideal, at least provides some protection to other residential forms of housing, but not to conversion. We understand it's presently under consideration to change that requirement so that ONHWP will provide warranties. We are certainly urging that the ONHWP warranties and the compensation fund that they have, the registration enrolment requirements in ONHWP and the technical audit requirements should be made applicable to conversion buildings, and the ONHWP act should be revised accordingly.

Finally, with regard to disclosure statements, as you know, in the case of a purchaser of a condominium unit, they're entitled to receive a disclosure statement at the present time from the vendor of condominium units. But there's nothing that requires a conversion vendor to disclose what building deficiencies there are or the underfunding of the reserve fund subject to a very ethereal possible claim that there's a major issue that's not being disclosed.

In essence, section 52 of the Condominium Act as it now exists should be improved to require either the disclosure statement or the first-year budget to disclose to purchasers the kind of building deficiencies that are revealed by the technical audit study and whether those building deficiencies have been repaired, whether there's a reserve fund study completed, whether the reserve fund is adequate to provide for the repairs and whether the ONHWP protection is inapplicable. So we're asking for those types of provisions to be put in the Condominium

Act in a highlighted section of the disclosure statement in the case of a conversion.

Basically, those are our recommendations. We appreciate that there is progress hopefully being made in changing the Condominium Act at the present time. We've had very good opportunities and very good dialogue with the Ministry of Consumer and Commercial Relations, but we had not ourselves twigged to this conversion issue as well as we might have until we began considering it in this context.

We realize that the context here is simply to decide whether or not municipal approvals should be allowed to continue as requirements or whether they should be removed, and that's what you have on the table. From our point of view, we're simply saying that if you do cease requiring municipal approvals, you will open the floodgates to conversions. There will be an awful lot of purchasers who will not be well protected, and they will suffer financially because they will not be able to compare apples to apples when they do a purchase of a conversion building compared to an existing building or a building that had gone through the ONHWP process and had established a reserve fund.

Mr Jim Flaherty (Durham Centre): Thank you, Mr Gardiner. It's nice to see you again, because, as you know, I'm responsible for our condominium reform in Ontario, and you and I and the Association of Condominium Managers of Ontario have met many times over the past seven or eight months. I appreciate in particular your raising the issue concerning conversions, because it is a fact of life in the development industry and the conversion industry that is becoming more prevalent.

I appreciate also that a number of the amendments that you're proposing relate to the Condominium Act. As you know, with that act we are at the stage now of revising the working draft on the basis of submissions of organizations such as the Association of Condominium Managers of Ontario, which you represent. In particular, I think we need to take into consideration the specific issues of technical audits or performance studies and reserve fund studies, which you have raised — with respect to reserve fund studies, so that we make sure, concerning the used housing stock, that purchasers or renters are not put in a position of surprise when they purchase a converted dwelling.

Thank you for your assistance on this point and for your continued assistance and the help of the Association of Condominium Managers of Ontario in our efforts to modernize and reform the Condominium Act.

Mr Gardiner: We very much appreciate the relationship we've had with the ministry and its staff working our way through a series of meetings on the Condominium Act. We must say that we're encouraged by many of the provisions that might come forward in that regard. I suppose it's become this forum that has actually twigged us to the necessity to think harder on behalf of consumers with respect to the unique problems presented by conversions. There are some refinements here that deserve fresh consideration, with respect to both the Condominium Act and the ONHWP act.

Mr Curling: I can tell you that you're way ahead of us in the opposition because you see draft legislation that

is already on the road and this is a consultation process. I'll tell you, in the cellars of this place they're drafting all of these things already while we're having discussion.

However, I listened to your presentation. I just hope that you're mindful of the fact that when we have conversion to condominiums, it's a matter of the depletion of any affordable housing going in one direction. That's why people object to this conversion matter, because this is rental stock that is going out into condominiums.

It's rather interesting too, and I'm sure you're quite aware of the fact, that, as you said — and you pointed that out — “I hope that they bring the thing up to standard so they can sell it those who can buy.” In the meantime, many of the non-profit and many of the government projects are being terribly neglected, awfully neglected. The government itself has been a terrible landlord, not maintaining those buildings up to a certain standard, and now bringing it up to a standard so it can sell it to those who can afford it. Those who can't afford it, who can't buy the condominiums, will be subjected to the depleted stock, will have to find somewhere else.

The objection I have is that when those affordable stocks are gone, I wonder where those people go. On the other hand, it's really pathetic that as we dry up the bottom end, the landlords and developers will never build at the lower end. I'm not at all shocked, but that's the prediction. I'm glad that you're trying to protect those who'd like to buy, but in the meantime, as you meet with the folks who will draft the legislation, ask them to protect those tenants who can't buy.

Mr Marchese: Mr Gardiner, as a first remark, I'm very happy that you and Mr Flaherty are working very closely together and that things are coming along just fine.

Second, if this government is mad enough to go through with this proposal, then I hope it will do exactly what you propose, because you've raised some very good points with the reserve fund and the technical audit suggestion.

What you have indicated is what many others are indicating, and that is that if they go through with the elimination of the Ontario rental protection act, we're likely to see many conversions. You're confirming that with your presentation today, it seems. We've been telling them that when happens we're taking out of the market a great deal of rental accommodation.

Do you think other landlords should have a reserve fund to deal with capital projects in the same way you have?

Mr Gardiner: I think it would be a wise thing for landlords to do in rental situations. I must say that in condominium situations there are many unit owners who get very upset by having to have a reserve fund in a condominium, and some property managers do as well. But on the other hand, at least it provides a way of funding repairs that are often humongous problems.

I'm not qualified to comment about how bad the state of repair is in the rental area other than what I suspect, that it's God-awful in many cases. As a concept of requiring anyone who owns a high-rise building where people are living, it seems to me that rental owners

should be thinking about protecting the building's future in that way. That's not something I'm speaking specifically to today, but I can see that it's a viable concept.

The Chair: Thank you very much, Mr Gardiner. We appreciate your input into our process. Have a good evening.

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O'SHANTER DEVELOPMENT CO LTD

The Chair: Our next presenter is Jonathan Krehm from O'Shanter Development Co Ltd. Good evening, Mr Krehm.

Mr Jonathan Krehm: Good evening and thank you for the opportunity to appear here tonight. I'm one of the owners of the O'Shanter Development Co Ltd. We currently manage some 1,800 apartments in the Metro Toronto area. We have been in residential property management for over 30 years. This is — I've lost track — at least the third bit of legislation. I'm getting quite used to coming to this room. In our organization I have personally overseen our rent review departments and conducted well over 100 rent review hearings under four different acts. So I'm very familiar with how the various bits of legislation have been piled on each other and the way the system has worked and does work.

There has been a pattern to the legislative and regulatory changes since rent controls were introduced in 1975. Rent regulation in the past 21 years has operated on the assumption that the industry was highly profitable. Reality has been otherwise for a long time. The following studies generated by the Ontario government looked carefully at the financial state of our industry, and I'd like to direct Mr Marchese in particular to these studies because he was questioning Mr Andrade this afternoon about what proof did we have about the financial state of the industry.

The first bit of proof we had was published in 1982 by the Ministry of Municipal Affairs and Housing. It was authored by Pat Laverty and called *The Impact of Rent Review on Rental Housing in Ontario*. The Thom commission research study 7, prepared by Campbell, Sharp, titled *Survey of Financial Performance of Landlords*, was published in October 1984. In August 1989, Royal LePage's real estate consulting services prepared, for the Ministry of Housing rent review policy branch, *Financial Trends and Other Characteristics of Ontario's Residential Rental Stock*.

I would like to run through the conclusions of these three reports. If anything, the financial state of this industry, as most industries in this country, isn't better in 1996 than it was in 1989. We don't have time for that, but I have included with my submission an appendix which runs through the major conclusions of these three reports on the financial viability of the rental housing industry in Ontario since the early 1970s, and the conclusions were the same in all three reports. This industry has been stripped of its reserves and its capital by rent regulation. It operates with returns that are far below what risk-free returns are. If you had put your money into government bonds in the 1970s, you not only would have had a much simpler and better sleep time, you would have had better returns. That is all three reports inclusive.

The real problem we have is that every rent control regime starts from the assumption that this industry is taking in big gobs of money and that keeping controls on for the needy, supposedly to help those in social need, is a possibility. What we have done is stripped the industry of capital for 20 years. The rental housing stock is in dire condition. Ten years ago the estimates were \$10 billion, what was needed to fix it up. They are far higher than that now. That was the estimate of a long time ago. The unfortunate thing with the present legislation, although it's the first time there have been some areas of suggested improvement, is that it buys into the same assumptions that previous legislation did, that this industry needs to be policed and controlled in its revenues and that there will somehow be some benefit to the needy in the province by restricting the revenues of this industry.

I don't have a lot of time so I'd like to go into some of the specific proposals in the discussion paper; not all of them because they've been very well covered by many other briefs.

On the stated proposals for allowing greater-than-guideline increases for capital expenditures, I think the cap should be higher than 4%. I would suggest 6% and that the carry-forward provisions be unlimited.

Whatever cap you put on it, you're going to be trapping some landlord and some rental housing stock in terrible shape. The worse off it is, the more money that needs to be spent, you're going to be condemning it to demolition or just to running into the ground. There are all sorts of examples. We're not at the Bronx yet, but you can drive around Toronto now and see the boarded-up apartment buildings that have already occurred because of the controls of the last 21 years.

The continuing ability of tenants to apply to reduce rents continues the most draconian feature of the anti-industry provisions brought in by the previous government. I was shocked to see that these provisions were being left in the government proposal. I suggest rent reduction applications should be limited to property tax decreases and withdrawal of services. You're not going to get people to spend money they don't have to fix up their buildings by reducing their rents and giving them less money. It doesn't make sense and it never has.

I also think the proposals to allow negotiated rents between tenant and landlord are good, but I don't understand why there's a cap on it. I don't understand why two parties can't come to agreement. If there was to be, as in much consumer protection legislation, a cool-off time whereby either party could get out of it in 72 hours or a week, whatever you want it, that's fine too. Give people the right to change their mind in a brief period of time, to reconsider it and to get advice.

Maximum rents should stay in place and continue to increase by the guideline. It does not need the rent registry. We all have the information; we can all do the arithmetic.

Another issue for discussion was maintenance. Dealing in this section of the paper, there was a question suggested of whether eligibility requirements should be required for capital expenditures. I say not. I own my building. Most of the money I have to spend on it is to keep it up and modernize it in terms of building code

standards, but when I want to improve the building I'd like to have some of the rights of a property owner.

With the proposals on maintenance there has been continuing a police mentality, that if we give building inspectors more authority to police building owners, somehow we will end all problems in rental housing stock. I operated 500 units in Calgary for some eight years. The last building was actually — and I'll get to that later on if I have time — converted to condominiums. We in our property saw a building inspector three times in eight years on 500 suites.

In Calgary, interestingly enough, the property taxes are not quite one third, about 40%, of the level that they are in Metropolitan Toronto. It might have to do with what sort of municipal services are there. The rental housing stock in Calgary is in twice as good condition as that in Metropolitan Toronto. Although they have a thin market, they have supply being built. People will build in that market because it's a free market. When you had 15 private sector units being built in Metropolitan Toronto last year, that's an indication the industry is already dead. If you want to revive it, get rid of what's killed it, which is these controls.

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If you continue along the rights of turning property violations into quasi-criminal offences, there has to be a full right of appeal given to people, property owners, to be able to have a right of appeal. In municipalities where their housing standard bylaw is under the Planning Act, they have that by law. In the city of Toronto, where it's governed by the City of Toronto Act, that is not the case. The city of Toronto maintains that under certain kinds of notice — they send them by registered mail — there's no right of appeal for a work order. That should be eliminated. There should be a right of appeal if you're going to allow people draconian provisions in terms of policing.

I would then get on to what I think is the most positive aspect of the legislative package, which is the repeal of the Rental Housing Protection Act. I think the last deputant's presence here is an indication that people are worried about the competition of low-cost, affordable home ownership housing. I also agree heartily with the last deputant's suggestion that there should be proper reserve funds and studies on any conversion.

As I mentioned earlier, I was involved in a condominium conversion in Calgary. It was a 90-suite project. It was 15 years old. It was sold out over a year, exclusively for home ownership, as there was a rather brisk market in condo conversions in Calgary and Edmonton in the mid-1990s. There have not been drastic rent increases; the market absorbed it. There was new construction as a result, and it gave an opportunity for people to buy their homes at a level that wouldn't be available otherwise, and there was substantial refurbishment of that housing stock. When we converted 90 units in Calgary, we spent on physical improvements just inside the units over \$15,000 per suite. They were turned into essentially brand-new product, and it was cheaper than having new construction.

There is one problem with the government's proposal. The stated intention is wonderful. It says, "Demolitions, major renovations, and conversions of rental buildings to

condominiums or cooperatives will no longer require municipal approval." Unfortunately, if you just repeal the Rental Housing Protection Act, you have not lived up to this policy. If the government repeals the Rental Housing Protection Act, municipal approvals will still be required under section 52 of the Condominium Act, which requires a condominium description to be put through the same planning process as a plan of subdivision under the Planning Act.

Generally, municipalities approve plans of subdivision under the Planning Act, regardless of who has the approval function. Subsection 51(24), which sets out the criteria for draft plan approval, includes obligations to consider whether the description is premature or in the public interest or if it conforms to an official plan. Municipalities could thwart conversion using these subsections. Section 51(24) of the Planning Act gives municipalities authority to turn down applications.

I suggest that conversions of existing rental buildings be exempted from section 50(2) of the Condominium Act. Without this exemption, the proposed legislation will be dysfunctional. Condominium conversion could bring the refurbishment of a portion of Ontario's rental housing stock. Conversions would provide the least expensive possible form of home ownership in a given market. They provide employment for trades and help stimulate the economy. These projects need much less lead time to get started than new construction projects.

We support majority tenant approval being necessary for conversions, with the caveat that once proper notice provisions have been met, a majority is defined as being a majority of respondents, just as in any election in this country. The tenure for non-purchasing tenants should be guaranteed, and I would suggest a period of three years to ensure that tenants are not displaced against their will.

This legislative package is very disappointing. It preserves intact much of the regulatory framework of the previous regime. There are on the regulatory side minor improvements, including the vacancy decontrol-recontrol proposal. The most positive part of it is the repeal of the RHPA, but I must say, for the government of free enterprise, I was a little disappointed.

Anyway, thank you very much for the opportunity to be here.

Mr Grandmaître: I agree with you that most of the high-rise buildings were built in the 1960s and the 1970s. How come these same buildings — and you will agree with me that being in housing today is a business, a big business.

Mr Krehm: It is a business, yes.

Mr Grandmaître: Definitely. How come these same buildings today are in need of \$10 billion of repairs? Is it bad management by landlords?

Mr Krehm: The biggest reason is the suppression of rents and values due to rent regulation. By the way, if one took the 1960s single-family housing stock or the office building stock, there would be a substantial amount of refurbishment needed in that sort of building stock.

Mr Grandmaître: No, I'm talking about landlords.

Mr Krehm: The difference is, we don't have the ability to finance it. We can't pay for improvements.

Mr Grandmaître: After 25 years, this building should be paid off. It should be paid off, or else it's bad management.

Mr Krehm: Again, this attitude and this sort of thing — you've been regulating this province, you squandered \$10 billion on non-profit housing programs at 40% greater than the cost of building it according to CMHC, and you still have a housing crisis. When are you going to learn that it doesn't work?

Mr Grandmaître: I'll tell you, sir —

The Chair: Thank you, Mr Grandmaître. Mr Marchese.

Mr Grandmaître: I'm a landlord. I know.

Mr Krehm: I've heard it for 15 years. I'm sick of it, quite frankly.

Mr Grandmaître: But you've never understood.

Mr Marchese: Mr Krehm, do you support having a reserve fund for rental properties?

Mr Krehm: Where are we going to get the money? Are we going to be able to raise it through rents? Sure. If we can raise it through rents, absolutely. No problem. Let us have it like there is —

Mr Marchese: Mr Krehm, you were supporting the idea of a reserve fund for the conversions. You said that.

Mr Krehm: Absolutely.

Mr Marchese: But in terms of a reserve fund for regular rental properties —

Mr Krehm: Absolutely, if we can raise it from the revenues, the only place it can come from. If there is going to be a toll put on rents to put into reserve funds, great. No problem.

Mr Marchese: All right, so you're saying that some people think this business is highly profitable and that's a mistake. Is it profitable, though?

Mr Krehm: When you say it's profitable, please refer to the literature.

Mr Marchese: You've asked me to refer to it. We have only a few seconds. I'm following your report. You said here that many assume that the industry is highly profitable, and they're wrong.

Mr Krehm: Let's quote —

Mr Marchese: But are you doing okay?

Mr Krehm: Let's see what Royal LePage said. "As outlined above, profitability was already declined at the date" —

Mr Marchese: Mr Krehm, listen. We don't have the time.

Mr Krehm: — "of the implication of the legislation."

Mr Marchese: Listen to me, Mr Krehm.

Mr Krehm: "The introduction of rent review legislation's appearance is" —

Mr Marchese: We don't have time.

Mr Krehm: We can go on ad absurdum with this.

Mr Marchese: Let me just — are you doing okay?

The Chair: Thank you, Mr Marchese.

Mr Krehm: Am I doing okay?

Mr Marchese: Yes.

The Chair: Thank you, Mr Marchese. Mr Wettlaufer.

Mr Krehm: Am I in business? I'm still in business, yes.

Interjection.

Mr Krehm: That's your definition, Mr Marchese, not mine.

Mr Wettlaufer: Mr Marchese, I've got the floor.

The Chair: Mr Wettlaufer has the floor.

Mr Wettlaufer: Mr Krehm, I'd like to follow up something that Mr Grandmaître posed to you. That relates to the 25-year ownership period, and why isn't the building paid off. The members of the opposition parties keep referring to the amount of time that tenants move, but nobody seems to attach to the number of times a building might change hands over that 25-year period. Could it change, on average, every five to 10 years?

Mr Krehm: Quite possibly, yes. That's quite possible. Again, Mr Grandmaître is sitting there saying that's flipping —

Mr Curling: You said it.

Mr Krehm: — and that there's something evil with selling buildings. Again, there's been an attitude about this industry that doesn't apply to other sorts of property in this society. We just want to be treated like everyone else, Mr Grandmaître.

The Chair: Thank you, Mr Krehm, for waking us up. We appreciate your presentation tonight.

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TORONTO MAYOR'S COMMITTEE ON AGING

The Chair: The next group is the Toronto Mayor's Committee on Aging, represented by Lois Neely, the chair; John Ravenshad, the chair of the housing work group; and Margaret Bryce, the coordinator. Welcome to our committee. The floor is yours.

Ms Lois Neely: Thank you, honourable members. You'll notice I'm wearing the new Toronto mayor's committee T-shirt with our new slogan: "Not over the hill; still climbing." We hope that's what most seniors are still doing, still climbing, but unfortunately our incomes are not. They're fixed. In fact for many seniors they're tumbling backwards downhill very fast. The low interest rates are great for the housing market, but for seniors on a fixed income, they're just taking the butter off the bread.

The Chair: Excuse me. Your voice will pick up a lot better if you —

Ms Neely: I'll sit down now. I wanted you to see this super T-shirt. We let the men pick out the colour, incidentally. We had a contest and this was the winning slogan.

We have no way to change our fixed incomes. All around, we're being told to stay out of the job market. It's because of our extremely constricted financial position that we appeal to you tonight to consider our very special but very real housing needs.

Let me just say that I am a senior, born in Toronto's east end in 1925. That makes me 71. I've contributed to this country's manpower by producing four children and 12½ grandchildren. My four children are all working and paying taxes in Ontario. I've lived all my life in or near Toronto. In 1960, when I was just a kid, we turned our Veterans' Land Act home into a nursing home to care for seniors who had nowhere else to go. Later we incorporated as non-profit and built a new 75-bed nursing home.

For 20 years I was administrator. I say all this to indicate that the concerns of seniors have been with me for a long time.

Over the years I've been a homeowner, a landlord and, for the past 20 years, a tenant. Ten years ago I led the fight in our building against a 33% increase of rent, and we won. The landlord got only 8%. But I soon learned about harassment. This isn't in your text; this is the preamble. Our landlord was very angry and he used all the tricks in the book till finally I caved in. I thought I was a pretty strong person, but he reduced me to a basket case and I left. Now I'm a tenant in a superb building at Yonge and Davenport, where there are also nine floors under the retirement care home legislation. Some of the units are geared to income. All this to say I've been through the mill.

You have before you the text now of the Toronto mayor's committee, what they'd like me to say to you. Let me just highlight it for you.

The Toronto Mayor's Committee on Aging advises Toronto city council on issues which affect seniors in the city of Toronto. We're part of the city of Toronto; we support the position on tenant protection adopted by the city of Toronto which was presented to you on Monday by Mayor Hall and Councillor Gardner. We're grateful that you've also given us a time slot to talk particularly about seniors and the impact of the proposed legislation on seniors.

Many people believe that seniors are well-off and that they all own their own homes. This is not true. About 95% of Ontario's seniors have annual incomes below \$36,000. Less than 5% can be said to be well-off. In the city of Toronto, seniors are much like other people. About one half are renters, one half are homeowners. Senior tenants tend to be less well-off than seniors who own their own homes. In the greater Toronto area, more than 51,000 senior households, or 55% of seniors in rented accommodation, had an annual household income in 1990 of less than \$20,000. That's their household income. Seniors' incomes are fixed and seniors rarely have any hope of increasing their incomes. There's no way they can accommodate their budgets to sudden increases.

Since 1975, under rent control, seniors have had reasonable security of tenure and peace of mind that they could stay in their apartments as long as they wished. That peace of mind is about to be shattered. We firmly believe that many seniors will not be able to afford the allowable increases proposed in your discussion paper and will be forced to look for a new place to live, but they won't be able to compete in the private marketplace. In the GTA, there are just not enough low-cost apartments to go around. The consultation paper proposes to end rent control in order to encourage the private market to provide new rental housing. We don't think it's prudent or fair to count on the private sector to provide the housing stock for low-income people. They're not in a position to provide housing where there's no reasonable chance of profit.

Many low-income seniors now live in rental housing provided by non-profit organizations and municipalities especially for seniors. The non-profit program has been a boon to seniors — it really works — but there's a long

waiting list for subsidized units. About 6,000 seniors in Metropolitan Toronto are on the waiting list of the seniors' central housing registry for subsidized housing. We're concerned that they will be waiting forever and never get suitable affordable housing. We're therefore asking the government to reinstate the non-profit program in order to provide housing for needy seniors.

We're concerned about the proposed cancellation of the Rental Housing Protection Act. We believe that many older apartment buildings and retirement homes will be converted to condominiums and the tenants evicted. Again, seniors will have a lot of trouble finding new apartments which they can afford. They'll have to compete with other low-income tenants for the very few apartments which are vacant, now less than 1% in Metropolitan Toronto.

Seniors who continue to occupy the same units will continue to be covered by rent control, you say. But we believe seniors occupying units covered by rent control will receive less service than new tenants who are paying more rent. We're worried that seniors will be vulnerable to harassment, and I remind you I've been there. They can be intimidated during the day when few people are around. Many seniors will not have the energy or the resources to defend themselves and will simply choose to move out. But where will they go?

I would like now to turn to the other issues of special concern to seniors, the provisions related to residences which provide services which are called care homes in the legislation. The presentation from the Advocacy Centre for the Elderly deals most competently with these issues. We support their brief in its entirety.

The consultation paper proposes that service providers be allowed to transfer residents of care homes who need more service to some other facility. We recognize that people who refuse service or who need more service than can be provided pose a challenge to landlords and service providers. This is a problem to all landlords, not just the operators of care homes. However, there is no such thing as a transfer.

Since 1994 admissions to nursing homes and homes for the aged have been controlled by the placement coordination service in each region. In Metropolitan Toronto there are about 3,500 people waiting for a bed in a long-term-care facility. Even landlords who own both a care home and a nursing home are not able to effect a transfer. They are not in charge of the admission process. Seniors should not be forced to move to a long-term-care facility without their consent or the consent of their substitute decision-maker. It must be recognized that the proposed transfer is a euphemism for eviction.

Operators of care homes have asked for a fast-track eviction procedure. We're concerned that the procedure could be used to evict people who complain about the service or who are otherwise seen as troublesome. We agree with ACE that the procedure should be available only in congregate housing where space is shared and where the person poses a danger to the health and safety of other residents.

We therefore ask you to carefully consider the impact of the proposed legislation on the lives of Toronto's and Ontario's seniors. We would like to think this govern-

ment believes that our seniors, who have built and served this country so well, are now in their later years entitled to security and peace of mind. I thank you.

The Chair: Thank you very much. We've got about four minutes per caucus left for questions, beginning with Mr Marchese.

Mr Marchese: Thank you very much for coming again, as you often do on many matters of interest to the organization. You've highlighted one concern that the advocacy centre as well has highlighted, and that is you just can't force people out without their consent. None of the members on the other side has commented on that and I'm not sure the staff is qualified necessarily to speak on that particular issue, but it would be good for staff or one of the members to speak to that. I think you and the centre have raised a very good point about that.

You're not the only ones who have spoken about the Rental Housing Protection Act. Many are worried about the implications of that. In fact, a representative of condominiums is saying he was concerned that many of the buildings would be converted to condominiums and he wanted some protections around that.

Ms Neely: That's right. Seniors don't have the bucks to go and buy a condo.

Mr Marchese: And that's another matter. Exactly. So we're very concerned that we would be losing affordable rental stock once that is out of the way. Most submissions have stated the same concern.

You've also talked about asking the government to reinstate the non-profit program. That's just a dream. This government is not interested in doing that.

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Ms Neely: Hey, anything's possible.

Mr Marchese: I'm not sure.

Ms Neely: We wouldn't be here if we didn't think so.

Mr Marchese: I'm just not sure. Peel Non-Profit came and they talked about the fact that even they recognize that governments have to be there to provide that kind of housing because the private sector simply will not build. They know that.

Ms Neely: Charitable does a darned good job of it, if you'd let them have a go at it again — charitable non-profit.

Mr Marchese: We need to change governments for that, I think.

Ms Neely: No, we don't.

Mr Marchese: You've raised another point about seniors and fears, anxieties that they have around this, and many have come in front of this committee worried about what it means to decontrol. They have talked about being on fixed incomes, but I'm not sure — government members have not responded to this. They never really respond to that fear, and I hope they will. But I believe it's a real fear. Most tenants are very poor. A third of them earn below \$23,000. Many of them are seniors, obviously, and many are not; they're just working poor. What happens to them? They don't talk about that.

There are implications — and they haven't done any studies to tell us that this is not a problem, that we shouldn't worry. They have no study. So our perspective is it's going to be a real concern because many of you will be hit with a rental increase. Is that not your feeling?

Ms Neely: I think we've laid that out in our paper.

Mr Marchese: Do you think that by getting rid of rent control somehow the private sector is going to get out there and build?

Ms Neely: We made that point too. We're afraid it's not going to happen. We're scared, sure.

Mr Marchese: So why are they, do you think, introducing this decontrol kind of proposal?

Ms Neely: I don't pretend to think with the government. We're here to do our job and they have some intelligent people who put it together and this is an area that we're afraid of, that's all. I think we've made our point.

Ms Bassett: Thanks, Ms Neely, for your presentation. I'm interested, so perhaps you can clear it up, to know how often on average seniors move from apartments.

Ms Neely: Not very often. They dig in. You know that.

Ms Bassett: That's what I'd heard, but it was rumour and I hadn't had time to check it. If they don't move, we could remove some of the fear from them because the rent will not go up.

Ms Neely: Except the harassment there that we brought in because they are paying less rent than newcomers. If there's a way to turf these people out, the landlord and their flunkies will do everything they can to get them out. I've experienced it.

Ms Bassett: Of course, as you mentioned in your presentation, you said you've been through the mill and you knew that, so it's already going on, and I've seen it in my riding.

Ms Neely: That's right. I've been reduced to a basket case by harassment from a landlord.

Ms Bassett: You don't look like a basket case.

Ms Neely: I was five years ago.

Ms Bassett: Anyway, this government is really the first government to address the anti-harassment protection for tenants, and we believe, with a firm policy, that we can be very harsh and correct the problem with derelict, if you'd say that, landlords.

Ms Neely: I think you can do it with younger people, but older people are fearful. We've lived under authority. They're vulnerable. They're afraid that if they get attacked they'll have nowhere to turn. A lot of seniors are totally alone in the world. They don't have a family, they don't have friends, and so they will not fight. You get a bunch out here in a body that sounds like grey power, but individually, living alone in an apartment, they will not. They can't handle it. It's a physical part of aging.

Ms Bassett: All right. That's a good point.

Mrs Ross: I guess the important point to make here is that it is a discussion paper, there's no legislation yet —

Ms Neely: Right.

Mrs Ross: — and we're interested in hearing some of the points. I'm a little confused because I'm trying to understand the issue as best I can. A couple of presenters before you raised the issue about oh, all kinds of things. I couldn't even imagine living in these types of situations where ventilation was turned off, garbage wasn't picked up, taps were turned off. You said yourself you experienced some —

Ms Neely: Bad times.

Mrs Ross: — situations that you wouldn't want to repeat again. Even with all that happening, why do you think that what's there is good? You've been harassed, you've had problems before even with rent control in place. Don't you feel that some changes need to be made to make things better for tenants?

Ms Neely: If there's a way to do it, but I don't think taking off rent control is the way to do it. We'll always have human nature which will peck on the lower order if they can to get more money out of the deal, and I don't think you can legislate that change. This was an individual thing. I got harassed because I made trouble. If I'd laid quiet like everybody else in that apartment — they didn't get harassed, I did, because I cost the landlord a lot of money.

Mrs Ross: A lot of people have come here and said that builders won't build affordable housing. Let me just put something before you and get your opinion on this. If builders build an apartment that is a luxury apartment, somebody will move into that, somebody who is able to afford that, which means they'll move from an apartment into that one. That apartment then becomes available and somebody in another lower income will move into that one and so on down the line. So even though they're not building what you would term as affordable housing for the poor people, somewhere down the line somebody's going to vacate an apartment. Do you see what I'm saying?

Ms Neely: Yes, I hear what you're saying, but I don't think we're going to live that long.

Mr Curling: An excellent point. I think if it was said more often, the government would get the picture, that trickle-down, voodoo economics — some people won't hang around for 60 or 80 years. Even with that, it won't happen, because the people who are building are building at the top end of the market and you've got to wait until they drive that end down somehow.

Ms Neely: All we know is we've got 6,000 seniors waiting for affordable housing in the city of Toronto.

Mr Curling: The word that comes to mind now when you see a discussion paper like this, as they put it, and the legislation which is now being drafted inside the basements of some places right now as we speak, is fear. The seniors are fearful. They live in fear where they are. Would that be a proper word for us to say, that seniors are living in fear?

Ms Neely: They're not living in fear now, but we're living in fear of what might happen when the lid goes off. All we can say is, I believe we have competent government. I believe in government by elected representatives. I have confidence that you will do what's right, and we ask you to consider these proposals and worries and concerns that we're putting before you tonight.

Mr Curling: If I may just point out a couple of things in watching the pattern of this government, first, to begin with, we saw the reduction of allowance to some of the most vulnerable people by 22% in their income. We saw also the cancellation of non-profit housing that was serving people who are in greater need of affordable housing. About 385 projects were cancelled right off the bat. They say it's a discussion paper, but we know they're going to convert all of the non-profit housing or

convert rental units into condominiums for those who can buy. Therefore the affordable rental stocks will be gone. We also hear that the minister is proposing to sell off some of the non-profit housing. Therefore that's the pattern they're going. Now they're saying to all those who are living in those rental units: "If you should ever move, if you dare move, that rent within the building that you're in will go right up. So you'll be going into another unit with a high rent."

Do you still have confidence? I know your presentation was excellent. With your presentation, do you feel that the government will listen? I ask one other thing: Would you invite them — all of us — to visit many of the projects out there? We're talking about sitting in this nice little room here. If they could visit West Lodge, if they could visit some of the seniors' homes, maybe they could have an understanding of what people are living in and how they live.

Ms Neely: Sure. I think you should come and visit where I live. I live at Fellowship Towers, which has nine floors of retirement care and six floors of apartments. It's a great place to live. It's so nice and safe.

Again, I really feel that governments are missing the boat if they don't promote the charitables to get into the business of housing. They'd put money into it; they'd put energy in it. It's a win-win situation. In the city of London, I understand they've turned some of the city housing over to the Pentecostal Assemblies to run, because they do such an efficient job. Look at it, that's all I'm saying. We're not saying scrap everything, but have a look at non-profit and give the charitables a nudge to get back in the business. They were doing it a few years ago; they need encouragement to go into it again.

The Chair: Thank you very much, folks. We appreciate your coming out and making a presentation to us, and your input into the process.

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ACT! 33 COMMITTEE VERTICAL WATCH

The Chair: Our next presenter is Miss Suzette, representing ACT! 33 Committee and Vertical Watch. Welcome to our committee. Should you allow time for questions in your 20 minutes, they will begin with the government. The floor is yours.

Miss Suzette: Good evening, everyone. ACT! 33 stands for the Association of Concerned Tenants, about 1,000 of us, who reside at 33 Isabella Street, and Vertical Watch is the crime prevention program, like Community Watch, designed for apartment dwellers. Thus we are a vertical community.

I am Miss Suzette, and as the chairperson of ACT! 33 and Vertical Watch of our building, I was overjoyed when I first heard the term "tenant protection package." It sounded like exactly what we were after. We were in the process of explaining the many benefits of 24-hour mandatory security for high-rise apartments, and I thought finally Mr Leach and other legislators had listened to us and wisely acted on our suggestions.

Having read through the protection papers, as you all know, there are no references whatsoever to the safety

and security of rent-paying tenants, yet it is a sad reality that crime prevention must also be now legislated in order to be enforced by certain landlords. Criminals will continue to victimize tenants if landlords are not legislated to provide 24-hour security today. Since you are asking for commonsense improvements, we would like to suggest that before you even consider raising our rents, you legislate fair laws to protect us in our apartment homes.

Since we have been asked to speak from personal experiences, I'll use our building at 33 Isabella as an example. When I moved in 23 years ago, this beautiful new building had all the services imaginable: swimming pool, laundry, party rooms, game rooms, tennis courts, saunas, exercise room, meeting rooms, and I believe we had camera security at that time.

Today, we still have the same red carpets in most of our hallways, accented by years of vomit, poo-poo, snow and salt, frayed from overuse and subjected to chemical cleaners for the last 23 years. We still also have the same locks to our front doors, which means every person who has ever resided at 33 Isabella and chose to keep their keys still has access to our premises. Only after years of requests have we now a security camera aimed at the top of people's scalps at our front door. But you know what? No one's taping and no one's watching when crime occurs.

We have retained the tennis court, two saunas, and are blessed with a tuck shop which is a commercial tenant. We no longer have any of the other facilities except our laundry room. We do, however, have a beautiful, enticing front yard complete with flowers and trees, and you also would want to move into our impressive-looking building if you passed us by. But we have no full-time nor even part-time security. On weekends, approximately 1,000 people and about 1,000 pets are left to fend for themselves since we have no working staff on the premises. As we speak, ladies and gentlemen, we are without superintendents.

Yet our rents will again be due on the first of each month and our yearly increases will follow. Regardless of the lack of services, we must pay our full rents. It's the law.

Let me show you a glimpse of what happens in a law-abiding, no-security high-rise apartment. It's Monday morning. The front glass lobby door has been kicked in again, and amid shattered glass, you try to tiptoe to get outside your front door. Should you have your pets with you, broken shards of glass could cut their little paws. For others, bicycle tires and rubber-soled shoes are at risk.

Upon your return, your newly fixed front door lock does not accept your key. You can't get into your own home. You group together and wait for someone to open the door from the inside. You no longer bother to report this inconvenience to the management because it's too frequent. What's the point?

Tuesday: When you arrive home, you notice that your mailbox has been left open. You remember using your key to shut it, but perhaps you forgot. As you look around you, you notice that there are other people who seem to have forgotten to close their mailboxes too. It

isn't until the next week that you realize some of your income cheques are missing. They didn't seem to arrive in the mail. But it's rent time and you must pay your rent regardless. It's the law.

Wednesday, you do your laundry. While you step out of the laundry room to buy some more soap, someone steals some of your shirts, blue jeans and, would you believe, men's underwear. What can you do? Not much. There's no working camera that's secure and doing anything for our laundry room. But aren't we paying for the laundry room facilities as well? Management really doesn't want to hear this.

Thursday, you go down to your garage and find that your car has been broken into, your transmission gutted. But you've been lucky. Your neighbour, who parks next to you, tells you they stole his car altogether. You both report this to the supers, who tell you to call the police. The police tell you to call your insurance company, and there's nothing more you can do. Management claims no responsibility. But didn't they make recent repairs to that garage again, and whose money did they use?

Friday, your toilet bursts or your fridge dies and is emitting poisonous gases. But since it's the weekend, you have no chance for repairs until Monday or Tuesday, because in our building, nothing happens over the weekend. You see, there is no active staff in our building of 1,000 people, who pay rent Saturdays, Sundays and holidays too.

Saturday, while you went grocery shopping, thieves emptied your apartment and no one saw a thing. If you'll remember, there's no 24-hour security in this building and no weekend staff. You know what? All the thieves know it. Twenty-eight floors of merchandise, if you can take it, and who's going to stop you?

Finally, Sunday, our day of rest, except for the fire alarms, which ring —

Mr Marchese: Thank God there's only seven days.

Ms Suzette: I'm finally on Sunday now, the day of rest. The fire alarms ring incessantly, causing swarms of firefighters and ambulance and police to quickly descend at our apartments, but they can't find the fire. Someone is playing with the alarms all day, at everyone's expense. There's no one to stop them.

Then, when you least expect it, on a good Sunday you get stuck in the elevator for about an hour, and there's no responsible building staff to get you out. You can imagine how excited the fire department is to be summoned for the fourth or fifth time to help us that day. Still they come, and so does the ambulance, and so does the police. What needless expense, ladies and gentlemen, and you want to legislate landlords like ours to receive more money?

As tenants, we move into a building and we pledge to pay a monthly or yearly fee for our rent in exchange for working services. We all believe this also covers our safety and security. Yet when our lockers are broken into, our apartments are robbed and our vehicles are dismantled, we find out differently. When we sign our leases, we believe that in return for rents, we will reside safely and happily and problem-free in our homes, and that must be the law.

When we tenants move, I think we all know that as tenants we are only paying guests in the house of a landlord and we proceed to act accordingly. But once we move in, how does our landlord host behave? Some landlords certainly honour their agreements, and some don't. Those who do not respect the rights of their tenants are also the landlords who know that they are not legislated firmly enough to provide their tenants with security, safety and human compassion.

It is those negligent landlords who have brought us here today. It is those negligent landlords who make tenants' lives a nightmare. It is also those landlords who caused the formation of the Federation of Metro Tenants' Association 22 years ago, and still continue to force new tenants to band together and fight for their paid rights. It is those landlords who must now be legislated instantly and severely. They should not be rewarded by forcing their tenants to hand over more money in lieu of higher rents and repairs.

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Bad landlords who refuse to place rent-paying tenants' interests first should not be allowed to remain in the landlord business. Of course, we equally feel delinquent tenants should also be evicted at the first proof of causing criminal activity which directly affects the tenants, such as running a crack house, drug dealing in the apartments, stealing from tenants and harassing residents. This too must be clearly and swiftly legislated before there is justifiable possibility of even raising rents.

We all seek peaceful coexistence, and it appears that in 1996 coexistence between landlords and tenants must also be legislated. So we respectfully disagree with your present tenant protection package and we see no commonsense justification for raising our rents; none whatsoever.

As we stand today, I would rather be here requesting that our rents be lowered since we are not getting the services we are paying for. However, today we ask you to turn things around, turn things around in a way that will benefit everyone — tenants, landlords, builders and the government — everyone whose lives are affected by tenancy. Imagine a world of happy tenants and rich, worry-free landlords. You know what? This can be a reality tomorrow.

Legislate equally beneficial laws to all tenants, landlords and builders. Make it clear that being a landlord is a business and being a tenant is being a customer, thus the relationship is very clear: services in exchange for moneys paid.

Legislate that criminal activity will not be tolerated in tenant buildings. It means instant eviction, to protect the rest of your law-abiding, rent-paying tenants. And yes, delinquent tenants should also be dealt with and punished by eviction if they are affecting the safety and security of other tenants.

Most importantly, we ask you, legislate 24-hour security to all high-rise apartments and this positive crime prevention process will instantly benefit all tenants; it will protect the property of all landlords; it will save millions of police, firefighter and ambulance man-hours and certainly court time. Twenty-four-hour security in high-rise apartments will make safer communities — it will

return to us Ontario the safe — and hiring security staff will create thousands of jobs.

It is time to legislate security and safety and to prevent crime at a building level. It is time to enforce caring and compassion. It is time to do good.

We urge you to put yourselves in the place of us tenants, to walk 28 floors in our shoes, so to speak, and expand your understanding of what life would be like for you if you had to experience our daily robberies, landlord disputes, neighbour harassments. What would it be like for you to live our daily frustrations as victimized, rent-paying tenants, and add the threat of higher rents now? Try to imagine how you would feel if your stairwells were used for hotel rooms by junkies, your lockers rampaged, you had to step over bodies, bloody hypodermic needles and used condoms in your backyards. If you had to smell the scent of urine and human defecation inside your elevators on the weekends. Try to imagine what it would feel like for you to taste fear for your safety inside your own homes. All of this you have the power to change, to legislate.

Ladies and gentlemen of the government, we urge that in the next few weeks and months, each time you make new laws, please remember that you're affecting the lives of everyone around you. As tenants, we are your cashiers, your waitresses, your bakers, your bank clerks, we're at the CNE, your security guards. We are members of your family and your friends. So keep our faces in front of you, and as you decide on the new and improved laws to save rent controls and to bring about better landlord and tenant rights, keep us in mind.

We don't need protection, ladies and gentlemen; we just need good and fair laws. What is the formula for making fair laws? Before each new decision, ask yourselves this question first: Who is going to benefit from this action? Whom is this action going to benefit? And, if your answers come up, "Everyone," then and only then will you be fulfilling the trust we have all placed in you to date. Ladies and gentlemen of this government, we ask you to do good. Please do good for everyone. Thank you.

The Chair: Thank you. You've allowed about one minute per caucus for a comment or a quick question, beginning with the government.

Mr Hardeman: Thank you for a very informative and interesting presentation. I do hope that the events as you related them day by day were not all the days in the same week. I think that's more than anyone could be expected to bear.

I do have some concern that in fact all these things are happening under the present regime, the present system. So I think it's fair to suggest that what we presently have is not solving the needs of the housing situation in our urban centres. Other than more legislation or legislation to legislate the acts that need to be done, do you think in the proposal that's before us to make it easier to enforce the rules and regulations and property standards and so forth, that's going to be a help to some of the situations that you've put before us?

Miss Suzette: Well, only if you're mandating good laws is anything going to be a help, and if you're mandating good laws they should be very clear, precise and simple. There's no need for all the confusing wordage.

We're tenants, we pay rent to a landlord. The landlord's the businessman. He either has the money to be a landlord or he doesn't. If he wishes to be a builder or not, he either has the money or he doesn't. It's a very simple business proposition to me. Why are customers or tenants expected to foot the bills for a new business for a builder? This is what we can't seem to comprehend. I don't know of any other businesses where the customers are footing the bills for a future development. If I buy a product, I go to the store, it works, I'm happy, I go home. If it doesn't work, I go back and get an exchange. You cannot seem to be able to do this in a landlord and tenancy situation, but it should be the same thing. We're customers. The landlord is our proprietor.

Mr Curling: Miss Suzette, you have walked us emotionally through your day and your life — not only yours but many people who are under those kind of conditions. Many in the government say that that's the status quo. Do you believe the status quo should stay? I think what you said is that this direction they are going is going to make it worse. You're handing over the full responsibility, you're rewarding the people with more money to maybe do worse. You carefully and rightfully stated that there are good landlords who follow the law.

I want to thank you very much for bringing that personally to this committee and I would hope, too, that your invitation could be extended that we could visit your building —

Miss Suzette: Not on Mondays, because you can't get in.

Mr Curling: — and many other buildings — we'll try and get in. Because I think to personally be going there would help this committee to understand how people are suffering and why we should not hand this responsibility to this free market.

Mr Marchese: Miss Suzette, you have catalogued very comically but tragically the life experience of tenants in that building. What you have also enumerated is the following: You're paying year after year, earning less and less but paying more and more rent. You were expecting certain things to come as a result of that. They're not forthcoming. In fact, it's getting worse and worse.

Miss Suzette: Right.

Mr Marchese: It's a typical situation that you describe. Then you say rent control was a good thing. They're about to decontrol them and you're saying, how's that going to help, other than adding to the burden? Not only do you have to suffer these problems but you're going to have to pay more for it.

I would also like to add that Mr Krehm who came here earlier said that the capital expenditures are insufficient and inadequate. He proposes that instead of the 3% that we currently allow under the law for extraordinary expenses, it be increased to 6%. I'm not sure what some of the other friends on the other side think about that, but I know that from the litany of problems you've raised that's not going to help. In fact it'll make your situation worse.

The Chair: Thank you very much, Miss Suzette. We appreciate your coming and being part of our presentation.

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YORK EAST NEW DEMOCRATIC PARTY RIDING ASSOCIATION

The Chair: The next presenter, representing the York East New Democratic Party Riding Association, is Gerard Vandeelen. Welcome, sir. You have 20 minutes to use as you see fit. Questions, should you leave time for them, will begin with the Liberals. The floor is yours.

Mr Gerard Vandeelen: I've come here tonight to basically address the document New Directions in a generalized sense, I guess, after reviewing it and speaking a bit to our riding about it.

Let me tell you something about the riding briefly. It is East York basically. It encompasses almost three wards of East York. Of that, about 50% of the riding is made up of tenants. If you want to look at East York, the whole borough, as it were, that also includes part of the Don Mills provincial riding, which has a 63% tenant rate. Some of the neighbourhoods in East York and York East are Thorncliffe Park, for example, and Crescent Town. They're two of the ones that stand out in mind. It might be noted by the Conservatives on the panel that actually the residents of Thorncliffe Park sent a member to the government — closely, but close enough when you're looking at tenant voting.

At any rate, I'd like to now address some of the economics of this proposed legislation. One of the things it comes out and states is that it's here to protect against double-digit increases. I guess there's been a lot of talk that this is going to bring in higher rents, and that seems to be the assumption I make as well. Let's look at what that's going to result in.

With the government's tax cut that was recently initiated, that has the effect of bringing out higher property taxes, I believe, down the line, and that is going to be shifted on to rents and that will result in higher rents.

The repairs and public utility increases that are proposed are going to bring out higher rents. When you get higher rents, what this results in is higher wage demands — I would think that would follow — and from there higher inflation all around.

Another thing higher rents may produce is something that this government seems to have gotten out of the business of, which is public housing, co-op housing. If the rents become higher, where are tenants going to go if they can't afford them? They're going to be back looking at the government for some kind of assistance, and that may put you back in the business of public housing.

Another area is it could produce more basement apartments. We've had that discussion with different municipalities that are very against basement apartments and would like them to go away etc.

Higher rents, the higher inflation, is that going to lead to higher house prices in the end? It could very well be. If people are paying so much for an apartment, then who's to say that a house should be that much cheaper?

The landlords, of course, come in the best on this, I believe, because they've already got a built-in system against inflation and perhaps of inflation, with the guidelines that are in place now. This is going to give them a better shot at that.

Speaking a little bit about the repairs and utility increases that this bill would involve, it seems to me to be fair at the moment the rate that it goes where your rent can be increased for higher utility services. A good example might be last winter, I guess, with the heavy hydro load that a lot of people had to put out because of the cold winter. But what is being proposed is that those increases stay, and I can't see the reasoning behind — next winter could be balmy and certainly not like last winter, and that is just going to be pure profit going into the landlord's pocket.

I think they should at least fluctuate, as they currently do, or stay the same for a period of years. If you are going to allow them to go up and stay up, then let them stay there but not have another increase. Say next winter becomes that much worse than the previous one, well, the rent went up on the last winter and that's where it stays for a period of years, like three or five years could come up, and then look at another increase down the line.

The 2% currently is supposed to be being spent on maintenance and this the proposal wants to remove as well. I don't agree with that. At the moment maintenance repairs are not being made. There have been examples of that, and the deterrent to the landlord is currently small fines. In the meantime, the tenants have to keep paying their rent. And we've heard earlier this evening about boarded buildings that are just sitting there because improvements can't be made. Well, I might suggest to the committee that perhaps some of these buildings are boarded because the rent increases that were collected weren't put to the maintenance of those buildings and that's why they're sitting boarded up today, because they weren't spent where they should have been spent.

As for the removal of municipal approval for demolitions and conversions, I hesitate to think what our council — I can't speak for them, what they'd feel about that, but I know enough about how residents' groups would feel about it, totally against it, that you would just allow demolitions to occur at will, in a sense without any municipal involvement. That I can't fathom either.

To tenants themselves: I believe that this legislation could open the door to a lot of intimidation and harassment of tenants leading to evictions. That I don't believe is sounding an alarm. I come from a workforce in the post office and improper evictions, I would say, are very similar to unjust dismissals, and I've seen a lot of those, working at the post office. I know what happens with a lot of them because I work with temporary employees there and they don't have the same rights as other members do under the union. So you get people intimidated or fired and they leave. They don't fight it, they don't know how to fight it, they don't wish to fight it, whatever. So people's rights are being infringed in that respect, and this is tantamount to the same thing. You're going to have people intimidated into leaving and they're going to leave. Some will not know what their rights are. They'll just leave. Some will not want to fight it, to enter into the hassle and the red tape that fighting it may involve. That is a very serious concern of mine and something the committee really needs to look at seriously. If you're going to go ahead with this legislation, make sure that something is very well put out in that respect. I don't

know if it's going to be enough just to say, "Oh, we're going to have an agency that will look at evictions." We have a labour board now, but I dare say there are thousands of people who get fired who don't end up at the labour board. They just go on to whatever the next job is.

The legislation, as the government has said, is intended to protect tenants instead of units. Well, I don't see the evidence of that. One point is that they would get the first refusal on an option to purchase the unit. To my mind, most tenants live in apartments because they can't afford regular housing, and I guess the dream of most tenants is to have a house. Why they cannot save to get to purchase this house, I don't know. There are many reasons for that. Many of them are busy consuming. So I don't think first refusal on an option to purchase is a great carrot to hang out to tenants as to how we're going to protect them.

The dispute resolution system I believe should come under the administration of the government. Adjudicator appointments, either public tender or government employees is whom I'd like to see on that.

One last suggestion in wrapping up is that you may want to look at a system of no rent increases for a fixed period of years until a new tenant arrives. That might alleviate the massive increases that may come because of this legislation. Maybe if you say, "We're not going to have any increases in rent for a period of five years," and when the new tenant comes in, that's when you battle it out, that's when you negotiate. Maybe that's something the committee needs to look at.

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Mr Curling: Thank you for your presentation. In the area you are at there's a high concentration of seniors, I understand, in East York. What would be the impact you see? I know the seniors have just presented their point of view. I'm just wondering, are there concerns that you see in East York that the impact of this tenant protection package will do? Do you have any comments on that?

Mr Vandeelen: Not a lot. I'm well aware that that's a constituency of our riding, but to my mind a lot of that has been taken up in actual housing, like bungalow residences. There are seniors up in the Thorncliffe area, but a lot of them are in condominiums, so I don't know in what respect that's necessarily going to affect them.

As for tenants who are actually in buildings, I see how it would affect those who are facing rent increases. It's going to affect them harder than a lot of other people. It's going to affect them the same as people who are on minimum wage, something to that effect. They just won't be able to afford rent increases, and where are seniors going to go?

Mr Curling: Landlords now are poised to advocate about shelter allowance. It's nothing new; it's there now. Do you believe that shelter allowance, as it is and how the government is poised to bring in shelter allowance, will be helpful for people, or do you feel that less should be given or more would have to be given now that they'll gut rent control and therefore access to buildings or access to units would cost more? Do you see the government giving more money for shelter allowance in this instance?

Mr Vandeelen: Yes, to put it simply. That's not an area I've looked into a great deal, but from everything else I've said I believe it to be yes.

Mr Curling: Thank you.

Mr Marchese: I just have one question. I know there was a meeting at Flemingdon Park community centre a couple of weeks ago and I understand it was an interesting meeting. Mr John Parker came to represent Minister Dave Johnson because he couldn't make it in his riding. Were you there or did you hear about that meeting?

Mr Vandeelen: I heard about it. I wasn't there.

Mr Marchese: Oh, I see. So you won't be able to comment.

Mr Vandeelen: No.

Mr Marchese: Okay. I heard that it was interesting meeting. There were 300 tenants who had shown up. I think it rattled Mr Parker a little bit because the 300 people —

Mr Tilson: I don't think so.

Mr Marchese: Oh, yes, it did. I can tell you it did. The 300 people who went to that meeting told Mr Parker in no uncertain terms that they like rent control and that they like the system the way it is and that they shouldn't touch it. I thought it was a good meeting.

Mr Curling: I would too.

Mr Marchese: I expect, as time goes on, if this government dares to introduce legislation, that we're going to have lots of tenants who will become aware of what decontrolling means. Once they become aware that once you leave your unit they can increase it as much as they think they can get, a whole lot of people, 70% of who move in approximately five years, are going to say, "This is going to hurt me a little more than I thought," and you'll see them coming out to your meetings a little more frequently and you will hear them a little more audibly as time goes on. Thank you for coming today.

Mr Vandeelen: I'd like to just add that it may have rattled Mr Parker. I only know that after that in the local newspaper he was referring to the rent control legislation as rent review legislation.

Mr Marchese: Jeez. That was a Liberal cause.

Mr Tilson: Your party was in power for the last four years, over four years, from 1990 and I can tell you that I, for one, as someone who sat there in opposition, certainly didn't like any of their —

Interjection.

Mr Tilson: I did indeed. We have heard delegations; you heard the lady just before you who spoke about conditions in apartments with respect to security; we continue to hear stories of maintenance problems, about how buildings are deteriorating and not being repaired. You have made comments as to several improvements. You said that perhaps there shouldn't be any increases for five years with respect to rent across the board. You appear to support the process changes as long as they're independent, but —

Mr Curling: Don't stretch it too much.

Mr Tilson: I could be wrong, but that's what you appear to do. My question to you is that notwithstanding the criticisms of your party's housing policies with respect to maintenance, the criticisms with respect to security tonight — the woman ahead of you — have you

any suggestions? That's all this process with this committee is: reviewing a paper and listening to suggestions as to how the system can be improved. Do you feel that the housing policies of the government of Ontario can be improved, and if you do — obviously you must think about this because you're a member of the NDP riding association — do you have any suggestions as to how to improve the NDP's housing policies?

Mr Vandeelen: No. I think we had been on the right track.

Mr Tilson: So everything's just perfect the way it is?

Mr Vandeelen: It had been perfect.

Mr Tilson: Thank you. I have no other questions.

Mr Vandeelen: It has not been perfect any more.

The Chair: Any other questions?

Mr Maves: The assumption is made that if a unit is decontrolled, the rent will go through the roof. You've said that tonight and Mr Marchese has on several occasions. There's a number the ministry has given us that 50% of landlords are currently charging less than the allowable rents because the market won't bear the rents they're allowed to charge. That's the case now. They could charge more now —

Mr Marchese: If that's the case, keep rent control in.

Mr Maves: — but 50% of them aren't charging that amount. Why do you think that all of a sudden the market will just suddenly bear higher rents and everyone will start charging higher rents?

Mr Vandeelen: It's a possibility. That's what I'm stating.

Mr Maves: It's a possibility now that they can raise them, but they're not.

Mr Vandeelen: Yes, but are you entertaining that we should gamble and have that and have inflation skyrocket again? That's what it could lead to, I think.

The Chair: Thank you, sir. We appreciate your taking the time to come down and make your thoughts known to us tonight.

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REALSTAR MANAGEMENT

The Chair: Our next presenters, representing Realstar Management, are Jamie Macdonald and David Langill. Gentlemen, welcome to the committee.

Mr Jamie Macdonald: My name is Jamie Macdonald. I'm vice-president of finance for a company called Realstar Management. I've been in that position for the last eight years. Beside me is David Langill, who's also with Realstar and is vice-president of corporate development and responsible for all mortgage financing and acquisitions. David has been with Realstar for about 10 years.

Realstar was founded in 1973 and is in the business of long-term investment and management of apartments. Realstar is one of the largest property managers in Canada and currently manages approximately 23,000 units, of which 17,000 are located in Ontario and the balance throughout Canada and the United States. The majority of the 17,000 units in Ontario are located outside of Metropolitan Toronto in such centres as St Catharines, Kitchener, London, Barrie, Ottawa and

Peterborough. Realstar is owned by senior management, the Ontario teachers' pension plan and the CIBC.

Realstar manages buildings that are in the upper quartile of the rental market in terms of building quality and rent levels. There's a strong sense of ownership in our buildings which is demonstrated by our reinvestment of cash flows back into the properties. In our non-Metropolitan Toronto buildings the majority of our tenants are seniors. We also pride ourselves in maintaining responsive lines of communication with our tenants, which helps us to achieve near-full occupancy on an ongoing basis.

With respect to the proposed legislation, we are optimistic with a number of the positive steps that have been proposed. However, we are concerned with the issue of the elimination of legal maximum rents and want to focus our attention tonight and the attention of the committee to this one particular issue.

First of all, one of the government's objectives with respect to changes in the legislation is to let the market establish rent levels. The proposed legislation, we feel, does not meet this objective and imposes a greater degree of control than the existing legislation.

We understand from industry statistics that more than half the apartment rents in Ontario are currently determined by the open market and are not restricted by legal maximum rents. Under the proposed legislation all units will be subject to rent increases limited by the statutory guideline amount, except for those that turn over in a particular year and are re-rented at market.

Approximately 95% of the actual rents in our buildings in Ontario are rented at below-maximum rents. When an existing tenant renews a lease or if a new tenant moves into the building, the rent is negotiated between the tenant and ourselves. In many cases, tenants are prepared to pay a higher rent in order to have some improvements made to their unit. This may include new appliances, new carpets, repainting of the units etc. Tenants are often prepared to pay extra rent in order to defray the cost of the improvements to these units.

The proposed legislation, we feel, may increase a level of antagonism between tenant and landlord. For example, we believe that the ability of the landlord and tenant to negotiate the rent will be impaired as the landlord in many circumstances will not be able to increase the rent above the statutory guideline amount even if the tenant is prepared to pay more to help cover the cost of in-suite improvements.

Mr David Langill: All existing tenants and tenants coming into our buildings are aware of and have accepted the fact that the legal maximum rents may be substantially higher than market rents. Tenants have demonstrated their confidence in the open market to prevent excessive increases, as demonstrated by a very low turnover in our portfolio and full occupancies that we maintain in our properties.

Ontario has been operating under various rent review and rent control legislations over the last 10 years. The concept of legal maximum rents has been accepted by landlords, tenants, investors and the lending community. The system of legal maximum rents provides protection to tenants against excessive rent increases by landlords.

In addition, landlords have been provided the ability to increase legal maximum rents for such items as financial losses, investment in capital expenditures, extraordinary cost increases and changes in financing costs. This has been an earned legal entitlement to the landlords which the proposed legislation wants to eliminate.

We provided to each of you a couple of case studies that review the implications of the current and proposed legislation. I draw your attention to the first page, case 1, which deals with the impact of the proposed legislation in a market where rents are increasing. Just to step you through it quickly, the year 1 legal maximum rents are identified at \$1,200, a market rent at \$900, actual rent being achieved at \$900. There's no loss of rent to the landlord to market rents or to legal maximum. As you'll see, legal maximum rents increase at a rate of 2.8%, whereas the market rent increases at a rate slightly higher than 5%, assuming that the market is performing in that fashion.

The proposed legislation identifies the impact that the limitation of legal maximum rent to contract rates will place and the impact it'll have on the loss of rent to market as well as the loss of legal maximum.

The second scenario shows an immediate reduction in legal maximum rent potential on turnover of the unit in year 2 of \$284 and subsequent losses to market rent as well as the loss of legal maximum rent in years 3 to 5.

This permanent loss of legal maximum rent potential and market rent is of significant concern when applied to all units in a single building or when applied to an entire portfolio such as ours.

Our experience is that both the investment and lending communities take significant comfort in a property where the market rents are less than legal maximum and increases above statutory guideline amounts are possible, if required by the landlord.

The proposed legislation will revert all units into a fully controlled position, which we believe will lead to uncertainty by lenders and investors as the higher rent potential is lost. This will make refinancing of existing debt and/or financing of capital expenditures more difficult for landlords to achieve. As well, it would be more difficult to attract new investment into our industry.

We're quite pleased that the proposed legislation provides that the landlord may invest in capital expenditures and make an application to increase the rents above the statutory guideline amount. We are concerned, however, that once the landlord has done that, achieves a 4% increase above the statutory guideline amount and then negotiates a rent with the tenant commensurate with the allowable increase, the new rent becomes legal maximum.

If on subsequent turnover of the unit, if it's re-rented at a lower rent, if there's a softening of the market, then the legal maximum rent is reduced and the potential for the 4% increase is lost forever. That increase is what was required by the landlords to fund the previous capital expenditures. Any entitlement for the above-guideline increase earned by a landlord in respect of capital expenditures must be maintained, otherwise the incentive to invest in capital expenditures will be undermined.

This contradicts another of the government's objectives, as we understand them, of improving the physical condition of the rental stock in Ontario and providing stimulus to Ontario's construction industry.

Mr Macdonald: We feel the proposed legislation does not fairly provide for circumstances where landlords are required to discount rents to rectify a vacancy issue or to operate in a soft market. While discounts may be of a temporary nature, the potential income of the property will be permanently impaired because the legal maximum rents for those units which have been discounted will be immediately reduced to those discounted rents.

As an example, in the city of Ottawa today we're going through sizeable vacancies and rents are being reduced city-wide in the magnitude of 5% to 10%. Under the proposed legislation, these lowers rents will now become the new legal maximum rents and it would take many years for a landlord to return to the rental levels prior to the downturn even while the market has improved some time prior to this.

If I can refer you to case 2, we are comparing the implications under the current legislation to the implications under the proposed legislation with a very similar set of circumstances with the first situation, with the exception that in year 2 we see a reduction in the market rent from \$900 to \$850 and then recovering in years 3 to 5. Again, you'll see in the top line under the current legislation legal maximum commencing in year 1 at \$1,200 and increasing from years 2 to 5 at the statutory increase amount, assumed to be 2.8%.

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You will see that under the current legislation the market rent goes from \$900 to \$850 and then returns to \$1,000, \$1,050 and \$1,100, as we're assuming that the actual rents would continue to follow the market. Under the proposed legislation what we find is that in year 1 we have no change. We have tenant A in here paying market rent of \$900. At the end of year 1, tenant A vacates and tenant B comes in. The market has moved downwards to \$850. The new rent is \$850 and the legal maximum has dropped to \$850. As compared to the current legislation, the legal maximum rent has immediately dropped \$384. In year 3, we have a turnaround in the market; the market has improved. However, the actual rent can only increase to \$850 plus the statutory guideline amount, which we have assumed in this example at 2.8%. Meanwhile, the market rent has improved to \$1,000. Accordingly, the landlord in this case has lost rent to market of \$126, and this continues on in years 4 and 5 with the amount of loss of rent to market increasing.

Following David's comments, this is another example where we feel the legislation needs to address that particular set of circumstances.

Under the existing legislation, the legal maximum rent is increased annually by the statutory guideline amount or if there are any additional applications for capital expenditures or excessive cost increases. Under the proposed legislation, this entitlement is not automatic. If the market will not support the statutory increase, the difference is permanently lost.

Very briefly, as an example, if in year 2 with a tenant the statutory increase amount again is 2.8%, but the

market will only allow a 1% increase, that difference in 1.8% can never be recovered until such time as the unit turns over some time in the future.

The last point I'd like to make is that in units where the market rents are below the legal maximum rents we believe the proposed legislation will significantly increase the turnover in units as sitting tenants will recognize the potential of the landlord to increase the rents above the statutory guideline amounts. By simply transferring to a like unit in the building or another building, the tenant enjoys an immediate reduction in the legal maximum rent and minimizes the exposure for future rent increases. As an example, if the current legal maximum rent is \$1,200 and the current actual rent is \$900, the tenant could receive future rent increases up to \$1,200. By moving to an identical unit in the building and paying the current market rent of \$900, the tenant's new legal maximum falls from \$1,200 to \$900.

In conclusion, while the proposed legislation moves positively with refinements to capital expenditures and in various other areas, it has negative implications in such areas as the elimination of legal maximum rents. Without substantial changes to the proposed legislation, we are in favour of the retention of the existing legislation with amendments to the capital expenditure areas as provided in the proposed legislation and we also firmly believe the concept of legal maximum rent should be maintained.

Mr Marchese: Mr Macdonald and Mr Langill, is it fair to say you're unhappy with the government in terms of its not going far enough with its proposal? You would have liked a complete elimination of rent control as one of the things you're looking for?

Mr Macdonald: In our portfolio of properties, as we mentioned earlier, about 95% of our units would be operating basically in a free market environment because the rents that are being paid are below the legal maximum rents. Ideally, yes, the one area where the existing legislation — sorry.

Mr Marchese: That's fine. I had a few other quick things I wanted to get to. Are you guys losing money or making some money in the field?

Mr Macdonald: It varies from property to property.

Mr Marchese: But generally, overall, you guys are doing okay?

Mr Macdonald: We make small returns on the property, yes.

Mr Marchese: I'm not sure I understood you correctly. If rent control were to be eliminated, this would stimulate the construction of rental accommodation. Did you say that, Mr Langill?

Mr Langill: No, I said the elimination or reduction of the legal maximum will serve as a deterrent to attract investment capital to the market.

Mr Marchese: I see. One of the things that many of the tenants came here to say is that they simply are paying quite a bit and sometimes there is no fair return for that in terms of services. Many have proposed, of course, that the capital expenditure is simply not enough and they need to raise it. They have raised it by 1%, from 3% to 4%, and someone else has suggested a 6% increase, which I think would make it very difficult for most tenants to afford. Their increases in wages are not

ever going to meet that desire of yours to get that money to do whatever you want. These people are saying: "Our wages have been frozen for many years. We couldn't afford what you folks want." How do you deal with that?

Mr Macdonald: Those are very difficult questions, and I'm not sure that both the industry and government have fully understood the implications of the fact that in Ontario we've had five or six years of a very poor economy where real wages have not grown. It is a concern. One of the reasons why there are so many units now that are below legal maximum rents is because the market and the incomes of people in Ontario can't support high rents. It is a problem.

On the flip side of it, as I think we're all aware, the rental housing stock in Ontario has deteriorated significantly, and a lot of these, like repairing garages and exterior moisture penetration, replacing windows, new heating systems and so on, cost a lot of money. How does it get paid?

Mr Maves: I'll be quick because I think Mr Hardeman would like to ask you something. With regard to legal maximums, can I summarize by saying that you either want to maintain the legal maximums or don't have recontrol?

Mr Macdonald: I think so, yes.

Mr Maves: I don't want to dismiss that. I understand that and I thank you for that. That's a very good scenario to have.

There's a constant debate about profitability. Mr Marchese constantly brings it up. The previous gentleman brought it up. A previous presenter said that there are three studies that show it's not a very profitable sector. I want to understand. You own a building. You purchase a building; in 25 years you pay it off. You run it; you put money into it. At the end of that 25 years, to me, most of your profit's going to be when you resell the building. Why wouldn't you maintain it? Because if it's in good maintenance and you can sell it at a better price, there's your retirement. That's number one. Why aren't you guys maintaining these buildings? Number two is, if it is profitable, why did you only build 15 units last year?

Mr Langill: Why which?

Mr Maves: Why did people only build 15 units in Toronto last year?

Mr Langill: To address your first question, we do maintain our rental stock. Our properties are in the upper quartile of every market throughout Ontario to the other locations in Canada and the United States. We invest in them for the long term. We've never sold a building. We don't trade in real estate at all. We've been at it for 23 years, and our intention is long-term investment and good, quality housing accommodations to the market.

It's a profitable business for us. We're not going to say it isn't. It's a reasonable investment. It's not one where you're going to retire on the annual returns from the property. Long-term capital appreciation is certainly important to us. Deleveraging of the real estate by paydown of the debt is important to us. To keep up the building, increasing the debt periodically to finance the costs of renovations, be it renovations necessary for items that Jamie mentioned or items that are required to update the buildings for safety reasons, such as the fire retrofit

legislation that was enacted — all those items we don't take exception to.

We believe very strongly in providing good, quality product. We maintain near full occupancy in our entire portfolio. We don't have large turnovers. We operate our buildings to a very selective tenant base, primarily seniors and discriminating professionals. They're demanding tenants and we make sure we provide good accommodations.

We have had the same questions that you have. Why not maintain them? In some of the situations we have seen, we've assisted lenders on foreclosure proceedings and takeovers where investors had gotten into properties, paid too high a price for them and the rents couldn't carry them. They were in inflationary times in the latter part of the 1980s. They had expectations. Rents at that time were increasing 6%, 8%, 10% a year and they weren't to be sustained. They were buying them on the basis of —

The Chair: We're cutting into Mr Grandmaître's time. He's getting really upset over here.

Mr Langill: I'm sorry.

Mr Grandmaître: You say that you're in the long-term investment business and that's the way a landlord should look at a major building. But how many landlords are in the long-term business when they look at their portfolio? Let's say they have 10 or 15 buildings; I would call that developer or builder major. They will keep that stock. But what's happening now is that small developers — I'm talking about six, eight and 12 units — these people stay in the market for maybe five, six or 10 years and then get rid of them. Then these buildings get refinanced a second time. That's what's really ruining the market as far as I'm concerned.

Mr Langill: If they trade at improper levels, I agree.

Mr Grandmaître: Absolutely. In the last five or six years very few people have traded because of the market. They didn't make any money. They wanted to get rid of it because they were losing too much money.

Mr Langill: It was a buyer's market in the last few years.

Mr Macdonald: One comment just to add is, and also, Mr Marchese, to your comment, is that I think that the income levels of Ontarians generally have been flat or decreasing.

Mr Grandmaître: Right on.

Mr Macdonald: People's wages are decreasing and there is a pressure there because, on the one hand, you haven't had a rental stock which has been kept up. We're very much the exception, because we have long-term capital investment programs that we do every single year. We update them for a three- to five-year period. We're trying to anticipate to get the stuff early and fixed quickly. I'm not sure that there are that many landlords out there who are doing that.

Mr Grandmaître: Very few.

Mr Macdonald: I think one of the problems is that you have a situation where there are limited incomes available to support an investment in the rental housing stock. It's expensive to keep it up. Taxes are high, utilities are expensive and there are costs of actually

running the building that are also very costly, that cause the rents to be higher than —

The Chair: Thank you. We've used up all the allotted time.

Mr Tilson: It's all over.

The Chair: It's all over for this evening. Gentlemen, thank you very much for your interest in coming here this evening and making a presentation.

Mr Hardeman has a paper he wants to table before we leave.

Mr Hardeman: There have been a number of questions during the hearings thus far about the consultation process that was done to reach this discussion paper. I have to share with the committee a list of all the parties that were consulted — the tenants, the advocacy groups, the development industry and so forth. I table that with the committee for your perusal.

The Chair: Thank you very much, Mr Hardeman. The committee stands adjourned until 1 o'clock tomorrow.

The committee adjourned at 2103.

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président: Mr Jack Carroll (Chatham-Kent PC)

Vice-Chair / Vice-Président: Mr Bart Maves (Niagara Falls PC)

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Mr Joseph N. Tascona (Simcoe Centre / -Centre PC)
Mr Len Wood (Cochrane North / -Nord ND)
Mr Terence H. Young (Halton Centre / -Centre PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Ms Isabel Bassett (St Andrew-St Patrick PC) for Mr Danford
Mr David Boushy (Sarnia PC) for Mr Stewart
Mr Alvin Curling (Scarborough North / -Nord L) for Mrs Pupatello
Mr Bruce Smith (Middlesex PC) for Mr Flaherty
Mr David Tilson (Dufferin-Peel PC) for Mr Tascona
Mr Wayne Wettlaufer (Kitchener PC) for Mr Young

Also taking part / Autres participants et participantes:

Mr Tony Silipo (Dovercourt ND)
Mr Jim Flaherty (Durham Centre / -Centre PC)
Mr Karl Cunningham, housing policy branch,
Ministry of Municipal Affairs and Housing

Clerk / Greffière: Ms Tonia Grannum

Staff / Personnel: Mr Jerry Richmond, research officer, Legislative Research Service

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Thursday 22 August 1996

Journal des débats (Hansard)

Jeudi 22 août 1996

**Standing committee on
general government**

Rent control

**Comité permanent des
affaires gouvernementales**

Réglementation des loyers d'habitation



Chair: Jack Carroll
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LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON
GENERAL GOVERNMENT

Thursday 22 August 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO
COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Jeudi 22 août 1996

The committee met at 1300 in room 151.

RENT CONTROL

The Chair (Mr Jack Carroll): Good afternoon. Welcome to the continuing hearings on the proposed changes to the rent protection legislation.

Mr Rosario Marchese (Fort York): I want to quickly table some questions to the government that I would like them to respond to at some point. Obviously I don't want them to answer these questions today. These have emerged in the course of our discussions. For the record, I'd like to read them:

(1) Can the government table any studies that show the impact on tenants of the proposed changes to rent control?

(2) Can the government table any studies showing how many units will be built across Ontario and in Metro Toronto as a result of their proposed changes to rent control? How many jobs will result? What rent levels will likely be charged in these buildings?

(3) Will the government commit to tabling their entire package of policies designed to bring about private sector rental construction prior to the end of public hearings into the tenant protection package?

(4) Can the government table estimates as to how many rental units will be lost due to the proposed scrapping of the Rental Housing Protection Act?

These are the questions that continue to plague me, but at least many of the deputations raised similar ones. I would like the government at some point to respond to them. If they don't do that, I will continue raising these questions.

The Chair: Okay, Mr Marchese. We've passed out a copy of the questions to all members of the committee.

ONTARIO ADVOCACY COALITION

The Chair: Our first presenters this afternoon represent the Ontario Advocacy Coalition: Patti Bregman, Mae Harman and Orville Endicott. Welcome. You have 20 minutes to use as you see fit. Should you allow time for questions, they would begin with the government. The floor is yours.

Ms Mae Harman: Thank you for this opportunity to present our views to these hearings. My name is Mae Harman. I am co-chair of the Ontario Advocacy Coalition, which represents 49 organizations of disabled and seniors throughout the province. With me are Orville Endicott, who is our coordinator, and Patti Bregman, who is a lawyer with ARCH, which is one of our member organizations.

The Ontario Advocacy Coalition has as its prime interest working towards the availability of advocates for all vulnerable people who need help in understanding their rights and carrying out their own wishes.

Tenants are often vulnerable because the supply of rental housing is scarce, and it is especially difficult for persons on low incomes to obtain appropriate and adequate housing that is within their means. The proposal to eliminate rent controls adds to the problem.

Among the most vulnerable are those persons with special needs who live in care homes. Orville Endicott will make our presentation and speak especially to this latter issue.

Mr Orville Endicott: I'm very glad that Patricia Bregman was able to be here, because she has been hospitalized and I was pressed into service because of her illness. I'm still going to say what I came to say, but I'm happy that Patricia will be in position to field your questions because I think she could probably do a better job of that than I could.

Mae has raised the issue of vulnerability, and that's what we're here to talk about. Our coalition is concerned with people who are vulnerable in our society because of disability or because of advancing years.

When Professor Ernie Lightman completed his study of unregulated accommodation in the province, which I'm sure you're familiar with and hope you will become more familiar with during the process that leads to new legislation, he entitled part one of his report, "Where You Live Can Make You Vulnerable," and that is certainly true.

Conversely, if you are already vulnerable, the issue of where you live becomes one of overriding importance. Very often vulnerability leads to people being placed in substandard dwellings, places where they have very little say about what happens to them on a day-to-day basis, so the issues that are being addressed by this committee are of very considerable importance.

I want to start out by suggesting two or three principles that I hope you will keep in mind as you work towards the conclusion of your committee work.

The first principle I would call the principle of empowerment. When you are talking about vulnerable people, you are talking about people who are not on a level playing field. They are very often subject to decisions that are made possibly and usually in their interests, but not always in their interests, decisions made by people more powerful than they are.

Consider the issue of empowerment. Consider the issue of a residence being a residence. Very often when a person has a label of some kind of disability or is a senior, the fact that they live in a particular place where they also receive services changes the context of that

place and it becomes more of a facility than a home. I think all of us hope that throughout our lifetime we will be able to say we live in a place that we can call home. That is the importance of some of the recent legislation that has been introduced, particularly in response to the Lightman report a few years ago.

The other principle that is of considerable importance is that of non-discrimination. Non-discrimination is a protected principle under the Ontario Human Rights Code and under the Canadian Charter of Rights and Freedoms. It means basically that you are entitled to be treated in the same way as anyone else as long as being treated in the same way as anyone else preserves or enhances your equality with others.

There comes a point, particularly for people with disabilities, where being treated the same way as everybody else makes them unequal with everybody else, so you have to think in terms of accommodation of special needs. I suppose in the context of what you're talking about, the word "accommodation" has a double meaning. It means the roof over your head and it also means the care that is taken to see that special needs are adequately accommodated.

When we look at the discussion paper that was released by the government, we see in it potentially useful ideas and potentially harmful ideas.

One of the potentially useful ideas is the provision that bed checks between the hours of 8 pm and 8 am will be permitted with the authorization of the tenant. This begs a couple of questions. One is: Who will make the bed checks? Does the tenant have any control over that? For example, if you're female, can you say, "I want the bed check to be done by a female rather than by a male attendant"? So will the tenants in care facilities, in care homes, be able to specify the kinds of things that would go on during those otherwise private times? Will there be a potential to expand from the notion of a bed check to some actual intervention, such as assisting the person to turn over at night, which is sometimes very difficult? Another question begged by the proposal to allow bed checks is: What if the landlord is not the service provider? Under the long-term-care legislation the policy is to keep separate the issues of residence and the issues of care, so if someone else is providing care, would it be possible for someone else to actually do the bed check?

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The issue of whether the landlord is or is not the service provider could be of considerable importance with respect to other proposals that are contained in the discussion paper.

We also think there is potentially value for vulnerable persons in the provision that a shorter notice period would be required when the tenancy has to be terminated involuntarily. But again this begs a question: How do you measure what is voluntary and involuntary? Is it involuntary termination if the person needs perhaps additional service that could be provided in the home? This may apply more in terms of the landlord moving to terminate the tenancy. Basically we believe that issues of care should be subject to as much control as possible by the person receiving the care.

Some of the more disconcerting proposals we see in the paper include the transfer to alternative facilities when the level-of-care needs change subject to appropriate protections. Again, what are these appropriate protections to be? They should be clearly spelled out.

What about the issue of consent? Under the Health Care Consent Act, which became law only a few months ago, people are required to provide their consent. They're entitled to consent to their admission to a care facility, and in the absence of their own personal ability to provide such consent, provisions are made for a substitute decision-maker to do that.

This raises questions about voluntariness. It obviously means that the person himself or herself is entitled to make decisions about the level of care they need and indeed about the level of risk they may be prepared to live with. Those are not decisions to be made by a landlord, I'm sure you would agree. They obviously have to be taken into consideration in implementing a proposal like transfer to alternative facilities.

Fast-track evictions could obviously be a problem for people. The presupposition seems to be that people in care facilities are more likely to behave in a way that would make it necessary to terminate their tenancy abruptly. We question that presumption. We don't think there is supporting evidence for it. We do think there would be alternative ways of dealing with a problem that may in an isolated case arise, just as it would arise in any rental accommodation situation. One of the solutions could be a restraining order to deal with behaviour that is clearly not only objectionable but threatens the safety and security of the landlord and of other tenants.

We're concerned about questions of conversion of properties, demolition or renovation. Are these going to result in a lessening of the availability of accessible residential accommodation?

We're concerned about the abolition of rent control generally, but particularly in the case of vulnerable persons who may be subject to harassment. I know the intention is to take steps to control harassment by a landlord, but obviously a vested interest is going to be there for landlords to get somebody out, because when the new tenant comes in the rent can be raised. That is a concern that we feel particularly applies in the case of vulnerable people.

I think I'll stop at that point. We have about five minutes left and we will certainly entertain your questions. I'm going to ask Mae Harman, before we end — maybe when you tell us that we have 30 seconds left — to read the one recommendation that will appear in the brief you are going to receive from us by the deadline of August 30. Because of Ms Bregman's illness, that brief is not ready for circulation today, but it will be in due course. It is in draft form, so you should have it very soon. I think it's time now for dialogue.

Mr Bruce Smith (Middlesex): Thank you for your presentation this afternoon. I think it's fair to conclude somewhat, and I don't want to do that prematurely, that there's been generally qualified support for the portion of the discussion paper that speaks to care homes, with the exception of some comments that specifically address some of the issues you've raised, specifically around the

issue of transfer of residents. I'm wondering if you've given any thought, and you alluded to it in part in your presentation, to what the formal process might be for transferring patients.

Ms Patti Bregman: To be honest, we don't think there is a formal process that's acceptable. What you have to understand about this is that we are talking about people's houses. Prior to the Residents' Rights Act, what was happening was people were being coerced and forced to move against their will.

Think about this: An 80-year-old woman who has a daughter with cerebral palsy and suddenly the mother is making some demands because she doesn't think her daughter is being cared for well enough. This is happening. This is not something that's a figment of our imagination. The mother, if she knows her daughter can be transferred without consent, is not going to say anything, and that's when people get hurt.

There's no need to have it. Basically, this assumes that people with disabilities want to live where they're at risk, and that isn't the case. There are different solutions for dealing with the problems. We recognize that with budgets, a care provider may not be able to provide, within their budget, all of the services. The solution isn't to go back to a system of removing people; the solution is to say: "Let's bring in additional long-term-care services. The family's willing to pay for two hours of additional service."

This is working now. This is what's happening now. There was a great deal of concern after Bill 120. In fact, there hasn't been a problem. There are creative ways to deal with it and also take into account the landlord's problem without taking away what we consider is a fundamental right. I can't think of any way you could come up with something.

Mr Alvin Curling (Scarborough North): Thank you for an excellent presentation. You have presented to us quite often and we appreciate your presentation here.

In Mr Leach's message to Parliament, he stated, "Most tenants' organizations have told us they like the protection provided by the current rent control system and in fact would like an even stricter system." To me, if that's the case — and you're saying too that you like it — all these changes will bring greater hardship, especially to seniors and people who are vulnerable like you. But he said, "We have to change it because the landlords say they will not build under these conditions." Two questions to you.

Ms Bregman: The reality is, number one, there were landlords prepared to build accessible housing, and the government pulled the funding out from that. There was money committed already for long-term-care funding.

We can't overemphasize the problem for people with disabilities with the removal of rent control. What is going to happen when you have a very limited number of accessible apartments? Most people with disabilities and seniors are on fixed incomes. The unemployment rate for people with disabilities is well over 50%. They are not going to be in a position to bid up. In fact, with new user fees and additional costs, the few accessible houses that are available are going to go and there's no guarantee that accessible housing will stay in the hands of people

who need it. There's nothing to ensure that the wonderful apartment on the ground floor, in a building that doesn't have an elevator, is going to go to the person who's got three kids, one of them in a wheelchair.

There is a huge shortage of accessible housing. The waiting list for accessible units that are affordable is astronomical. If you go ahead and deregulate rent control for this population, what you're going to find is families who can't cope and people moving out of the community. You say you want community, friends and family to support them. If the housing isn't there, if you can change housing over to condominiums, you're not going to have friends and family, because what has happened to people in the past is they're moved from London to Peterborough. It doesn't do much good. There are inquest reports to support the fact that the lack of housing has led to the movement of people to locations where supports can't be provided. We're really concerned about that, and when we move away from rent-geared-to-income housing, that concern will go up even more. It's a really significant impact.

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Mr Marchese: Thank you all for coming. It's good to see you again in a different forum. I want to just make some quick comments and tell you that we're very worried, as well, about the conversion of rental apartments into condominiums. In fact, Mr Gardiner from the Association of Condominium Managers of Ontario is concerned, too, about that and he was estimating that there will be a flood of rental accommodation converting to condominiums. To us, that's a loss of units. We want to ask them: Have they estimated what that loss is?

Ms Bregman: Can I add one more thing, though, that hasn't been in the discussion? Our concern is not only that, but it's a retrenchment of what was added last time around which was including care homes under the Rental Housing Protection Act. Because what was happening is the retirement home operators who decided they wanted to cater to the people who could pay \$2,000 a month were converting suddenly. Again, we were seeing people literally being shifted with 24 hours' notice from Peterborough to Kingston and back to London, with no controls. If you're going to take rental housing protection away from care homes, you have to be far more specific about what you mean when you say, "If there's available housing." You have to examine: Is that available housing accessible? Is it near the services they need? Is it in the same community where they're going to get their support? It's not enough to say: "Yes, if they move 100 miles away, it's available."

We had litigation going prior to this change because of the situation that arose in Peterborough where there was a conscious attempt by the operator to have certain people moved out because they got welfare and couldn't afford the tripled rent.

It's not only the condominium conversions that we're concerned about, it's what's going to happen to existing care homes, which just don't exist in large numbers.

The Chair: Thank you. Did you want to make that one recommendation?

Ms Harman: Yes. The one change that should be made to the legislation is to make it clear that landlords

cannot refuse entry to any person or agency who is providing a care or support service. Just as landlords cannot prohibit the entry of necessary services, such as those relating to repairs, landlords should not be able to intimidate tenants into not accepting services because it is against the landlord's wishes. This is particularly important where the landlord may also be a service provider.

The Chair: Thank you very much. We appreciate you being here today and giving us your input.

LABOUR COUNCIL OF METROPOLITAN TORONTO AND YORK REGION

The Chair: The next representative is, Pat Clancy, vice-president of the Labour Council of Metropolitan Toronto and York Region. Good afternoon, sir. Welcome to our committee.

Mr Pat Clancy: First of all, we'd like to thank you for allowing us the opportunity to come and make our submission. I'm making this submission on behalf of the Labour Council of Metropolitan Toronto and York Region. The president, Linda Torney, would have been here except she has been tied up for a few weeks on another project.

This brief is being submitted on behalf of the Labour Council of Metropolitan Toronto and York Region, which represents workers in both the public and the private sectors. Our 180,000 members work in industry, construction, services and the public sector — in fact, virtually every sector of the local economy. Many of our members are among Ontario's 3.5 million tenants. Throughout our 125-year history as a central labour body, we have consistently stood for, not just the rights of workers in the workplace, but the rights of those less fortunate than ourselves, and for the health and quality of life of the community. Our organization is presenting this brief because of a concern over the government's proposals which radically turn back the clock on tenants' rights in Ontario.

The provincial government's discussion paper is the biggest attack on tenants' rights in over 20 years. If this government's proposals become enshrined in legislation, it will mean the end of rent control in Ontario. The proposals will also result in less affordable housing, poorer relationships between landlords and tenants, and less maintenance work being carried out by landlords.

The government's proposal would virtually end rent control in Ontario. Called vacancy decontrol, the proposal allows a landlord to levy an unlimited increase in rent when a new tenant moves into an apartment. As a result, the incoming tenant would pay more rent under the government's proposals than she/he would have under the current legislation.

The government's own study of last fall estimated that 25% of tenants move every year. This study also estimated that over a five-year period about 70% of tenants move at least once. This means that within five years, the majority of apartments and rental homes will have had their rents decontrolled. The majority of tenants in Ontario will be paying more rent under the government's proposals than they would have under the current law.

Our members have suffered dramatically from the effects of recession. Most workers lost jobs that they had held for years, have exhausted UI benefits and have no

hope of employment in the job market where unemployment continues to be almost 10%. Before we get into any argument about where that number is, that's a number that was just recently released by Metro. Some have lost homes and become tenants. Others have been forced to relocate to cheaper accommodation or forced to relocate in an effort to find work. In addition to job loss, they will now experience increased cost for housing.

Even for those tenants who don't move, the government's proposals offer less protection from rent increases than the current law. The current Rent Control Act already has a rent guideline which is generous to the landlords. Under existing controls, they can increase rents by 2.8% plus they can apply for an extra 3% above this guideline. An increase of 5.8% far exceeds recent consumer price index increases, as well as wage and salary increases of workers, both unionized and non-union workers. Pensioners and others living on fixed incomes would be even further disadvantaged under the government's proposal.

Current figures indicate that 3,600 people are evicted each month in Metro Toronto. The government's proposals will lead to an increase of close to 8% to 10%. Coupled with the 22% cut in social services benefits, the proposals surely would lead to even more evictions and contribute to the already crisis-level problem of homelessness in Metro.

Tenants will also be worse off under the government's rent proposals because the province wants to get rid of the current costs-no-longer-borne provision of the current law. Under the Rent Control Act, once a capital repair has been paid for through rent increases, it comes out of the rent. Under the government's plan, tenants will be forced to pay for the repair through an increase in the rent forever.

The government's proposals also consider requiring tenants to pay for unnecessary or luxury renovations. This would be a huge step backward for tenants.

Vacancy decontrol: Under this fine example of New-speak, our community will lose affordable housing, already in dangerously short supply, as rents are raised without limit each time a new tenant moves into a unit.

Vacancy decontrol will also have a negative effect on landlord-tenant relations in the province. In effect, the government will be telling landlords that the way to raise rents is to harass or somehow convince the current tenants to move out of the apartment. The government has already admitted that its proposal will lead to harassment of tenants by landlords. It proposes the establishment of an anti-harassment unit to deal with the problem it will be creating. Given that enforcement units in the areas of health and safety, employment standards and similar consumer protection units are being downsized daily by this same government, it is difficult to believe that any anti-harassment unit would be staffed at anything near the required level.

The reality is, however, that most tenants harassed out of their apartments don't want to spend time filing anti-harassment forms. Of necessity, they will simply spend their time looking for new apartments in this now decontrolled market and they will, as we have pointed out earlier, be spending their time searching for new jobs; at

least, they will have to do that to help pay for their new rent.

It took a long time to get the rent registry set up and operating effectively. Tenants are now able to check with the local rent control office to learn the legal rent on an apartment and what services, ie, hydro, parking, are to be included with the rent. Vacancy decontrol will do away with the rent registry. Under the government's vacancy decontrol proposal, landlords will be free to set rents at whatever they wish and free to discontinue services which were previously included in the rent. Once tenants move into a new rental apartment or rental home, they will be covered by a rent control guideline, but the financial damage already will have been done.

1330

Ending the Rental Housing Protection Act. Currently, local governments are able to limit the demolition or conversion of affordable rental housing to other uses, such as condominiums, because of the Rental Housing Protection Act. The government proposes to eliminate this law. As a consequence, developers will be encouraged to demolish affordable rental housing in favour of more lucrative land uses. Tenants will lose their rental homes and the community will lose affordable rental housing.

Maintenance: The province proposes to devolve powers to municipal property standards inspectors and increase maximum fines for property standards violations. This proposal fails to acknowledge that in many communities there are insufficient resources to fully, effectively enforce property standards. Provincial reductions in funding to local governments will make the property inspection situation worse. The increase of maximum fines will do little to help maintenance because courts generally levy only minimal fines against landlords who violate property standards.

It is unacceptable that the provincial government is proposing to take away the tool of the rent freeze due to property standards violations. This method of the rent freeze has been effective in larger municipalities because it results in a significant financial penalty each and every month that repairs are not completed.

The government is proposing to take Landlord and Tenant Act disputes — ie, evictions, privacy issues — out of the courts and have the issues decided by a tribunal which will also decide on rent regulation issues. The discussion paper is vague as to how this new tribunal will operate. However, it is our view that under the new system the decision-makers must be knowledgeable, neutral and not political appointments made by the government of the day.

The discussion paper states it can take up to five months to evict a tenant. This is not the reality faced by most tenants. In most cities the court system is quite efficient in evicting tenants. Again, approximately 3,600 people are evicted in Metro Toronto each month, yet the minister has publicly stated he wanted to make it easier for landlords to evict tenants.

In conclusion, we believe the government should be spending its time ensuring adequate supplies of affordable housing rather than depleting an already inadequate supply.

Mr Mario Sergio (Yorkview): Mr Clancy, the minister himself has said that the elimination of rent control alone will not spur the construction of new affordable rental units. In your view, if this is the case, what should the government be doing to assist builders, developers to come out of the woodwork and start building new affordable rental units?

Mr Clancy: We ourselves, as a labour council, at one time were in the development of co-op housing. Co-op housing was a well-moving proposition. People were getting housing at reasonable rates and the contractors that were developing and building the houses were making good money.

Mr Sergio: But the funding is no longer there now.

Mr Clancy: The funding has now been taken away, so one of the fairest systems of providing housing no longer exists. If the government is really concerned about whether entrepreneurs will get back into developing housing, I think if they went to the people in the co-op industry they would find that they would be quite ready and willing to take on that responsibility.

Mr Marchese: There has been a great deal of unanimity around some of the issues you have raised. Other than the landlords and the Conservatives, everybody else agrees that we should maintain the costs-no-longer-borne provision. They want to take it out. We say we should maintain it.

We are very worried and the public is worried about the whole Rental Housing Protection Act. We think that the current system in place protects affordable rental accommodation. If you simply abandon that, many of these buildings will be converted. One lawyer, Mr Fink, said as much. The Association of Condominium Managers of Ontario also is very afraid that many of these rental units will disappear.

You made another good point and I want to add a point: Some people who have come here — developers, landlords — are doing okay. They don't tell you how much money they're making but they say it's profitable, maybe not very profitable — we don't know what that means — but they're doing okay. The current system says they can charge up to 5.8%, and you said wages are going down. Inflation is down. People with low incomes have much lower incomes than before. We think the current system protects us and still gives the landlord a reasonable rate of return. You agree with that, obviously.

Mr Clancy: Yes, we agree with it. I don't think anybody put anything in my mouth. My brief stated that we didn't agree with those things that the member raised, and for a couple of reasons. First of all the development of housing was doing very well. Builders were making money, people who supplied building materials were making money, and that was because a lot of it was subsidized and people were getting into good housing at a fair rate. This government has taken that away from us in the province of Ontario.

As far as rent controls are concerned, the people who are renting facilities do quite well. They do have the ability to make at least 5.8%. If they could justify why they should get that, at least they had that ability to do that. That was a far greater increase than people even in my union, the Autoworkers, were getting for increases on an annual basis over the last few years.

There seems to be some greed and it seems that this government, in their wisdom or lack thereof, wants to make sure they help their greedy supporters to be able to get more money. If they do that by, for a short period of time, limiting development, then when development really starts to be needed, they will be in there and they will be gouging like hell. You and I both know that.

Mr Wayne Wettlaufer (Kitchener): Thank you, Mr Clancy, for appearing before us today. I certainly wouldn't deny that there is some greed on the part of some landlords. However, I think we have to realize what the statistics say: that 80% of apartment units are in buildings of four units or less. That's throughout the province of Ontario. Some of those landlords have also appeared before us this week, and not all landlords are doing quite okay. I'm glad that Mr Marchese said that some are doing okay. Some are not doing okay. We heard the figures in the last few days.

The thing I am concerned about is when you talk about the anti-harassment unit. I realize that maybe it won't be Utopia when it's complete, but we are the first government that has ever tried to bring in an anti-harassment unit. I think you will admit that harassment is going on now and has been going on for many years by some of these bad landlords.

However, will you not also admit that there are some bad tenants? You talk about 3,600 evictions in Metro Toronto. I wonder how many of those 3,600 are for perhaps vandalism or non-payment of rent. Surely you don't expect that someone who owns a small unit, who may be supplementing their pension with the ownership of this unit, would be expected to absorb a tenant not paying his rent. Could I hear from you on that, perhaps?

Mr Clancy: I think that the point of tenants not paying their rent is a serious situation. This government is making it more serious because it's downsizing everything. They're downsizing employment. They're downsizing all those things that would be able to help those people pay their rent. I think we have to take a look at that. If that's the question you're asking me, then yes, we agree that people being unable to afford to pay the rent is a serious problem in a community like this and in a province like this. The government, instead of making the problem greater — and your friends in Ottawa are helping you very well doing the same thing, taking money out of workers' pockets. But the government in this province is prepared, for the purpose of putting more money in the pockets of the wealthy, to take money away from the pockets of the poor, and in my opinion there's no justification for that. We all have a right to live in this province and we all have the right to have jobs and we all have the right to the needs that are part of what we've established over many years.

The Chair: Thank you very much, Mr Clancy. Our time is up, unfortunately. We appreciate your coming here this afternoon and giving us your input into our process.

1340

KYLE RAE

The Chair: Our next presenter is Kyle Rae, a councillor from ward 6. Welcome to our committee.

Mr Kyle Rae: Good afternoon. I represent an area in downtown Toronto called ward 6, where 70% of the residents live in rented dwelling units. More than 13,000 of those units are in high-rise apartment buildings. There are more than 11,000 condo units in that same area, and it is estimated that more than 50% of those condos are rented to individuals in the ward. Most of them are in the north Jarvis or Church-Wellesley neighbourhood, a very stable neighbourhood, and it's my assertion that the reason it is stable is because we have rent controls in this city.

I've heard some comments about the small landlord. Most high-rise apartment buildings in my ward have hundreds of tenants in them. Many are so large that come election day there are two polling stations in the building. Some of you are familiar with Manulife, because I know you live in Manulife, and there are three polling stations because it's such a large building with so many tenants. In fact, because you all live in Manulife I always lose that poll. I've never won it.

Mr Sergio: I don't.

Mr Rae: Good for you. Mike got out just in time.

I've heard some comments, table talk, and I've also heard in the press of people who have been very upset about the city of Toronto taking a role in this matter. They believe we should not be spending money; we should not be organizing tenants. I have news for you, for those of you who don't understand the situation in the city of Toronto. The chief building official of the city of Toronto is charged by the province to inspect buildings to ensure that they meet the building code of this province, so I am the one who gets the phone call about the elevator that doesn't work, the balconies that are crumbling, the security at the front door that no longer works and the garages that are falling in. That's who gets the call. You don't get it. The city of Toronto, members of council get it.

If there's a problem with the fire code, you don't get that phone call. We get the phone call. We send out the fire inspectors. They do the work to ensure that the stairwells are clear, that the handrails are still in place, that they're not on the floor, and that alarms are either working or they don't keep going off every three minutes. We do that work, not the province. When there are vermin, air quality issues and sanitation problems in the buildings, you don't send out the staff; we do. The city of Toronto's public health inspectors do that.

For those of you who couldn't understand why the city of Toronto takes so much interest in this matter, I hope you understand why now. We deal with it day in and day out. Our staff work on it, and not only our political staff but our inspection staffs in many branches in the municipality. We do that work. So are we interested in maintaining safe and affordable housing stock? You betcha we are.

There is one jurisdiction that went through what you're trying to do, and they did that in 1971 to 1974: New York City. They experienced what you're doing. They called it vacancy decontrol, which was known as VD for short. More than 400,000 units were placed on the open market due to that process, and those 400,000 units went out there because landlords harassed their tenants and

pushed them out, and that housing stock was lost to regulation. They have gone back to it, and now they're worried because they've got a new governor who they think is not going to sign the bill next year, and so they're now organizing to stop the deregulation of rent control in that state.

It was interesting too that in that state they looked at the impact of rent regulation and they found it had no impact on the starts of new apartment buildings, none whatsoever. I have the report here if you're interested in it.

Early this week I was interested to read in the *Globe and Mail* that you had a deputant by the name of George Goldlist, the chairman of Goldlist Development Corp, and he was very unhappy that the government is not moving further on the issue of deregulation of the housing stock. That surprised me. I'm not sure I understand what Mr Goldlist's problem is. He is in a joint partnership with the province of Ontario today to redevelop the Ballet Opera House site, and he's going to put in 300 condo units this year and another 700 condo units later on in 1997 or 1998. What's stopping him from putting in rental accommodation today? There's nothing. If he wanted to, he could build it.

The development industry today no longer wants to take the responsibility of ensuring their properties comply with the building code, the fire code and public health issues. They don't want to do it. They want to offload it, build the condo, get the bank to give them the mortgage, and they walk away and leave it in the hands of the condo corporation. That's what they do today. It's a new era of residential development in this city. I don't think we're going to go back to apartment building as we've seen in the past, in the 1950s and 1960s. It's game over. What I'd like to see is rent controls being placed on the condo units that are being rented out to people, and I'm one of them. I rent a condo unit. That's where it should be going.

I think this government should be leaving rent control alone. If you are really and truly interested in neighbourhoods, in communities, in the built form of our cities and the upkeep of that built form, and stability, then you would beef up the capital improvement requirements that are needed. Too many landlords have flipped their properties over and over again, now find themselves in dire straits, and the tenants are left holding the bag. You're going to make it even more difficult for tenants. That is wrong. I don't believe that's really what you want to do in this province. You want to build strong communities, and you build them with rent control and with the rent regime we have had in the past; you don't go and deregulate it.

Mr Marchese: Mr Rae, thank you for your submission, you and many other councillors who have appeared before this committee. I have personally thanked all of you for your involvement, because I think you, as a city government, have a social responsibility towards your tenants, and we in Metro here have a lot of tenants. Most of these members on the other side are not within Metro, and I'm not quite sure they understand the seriousness of the sensitivities around this particular problem we share, you and I, in downtown Toronto.

Rent control, you said, does nothing to stimulate housing starts. We've heard that over and over, including from Mr Lampert, who has written a report for the government. In fact, it does nothing except enrich the landlord and impoverish the tenant. I think they understand that simply decontrolling will do nothing for that, but as I've said often enough, they are in collusion with the landlords, because other than the landlord and the Conservatives, nobody else agrees with them on that.

Mr Rae: What I don't understand is, who is this person who is going to start building these apartments? I have not seen one. I deal with the development industry day in and day out. They build in downtown Toronto, the biggest to the smallest. I have small to the one I told you about which they are going to start building in the fall, 308 units at the corner of Grosvenor and Bay, the biggest of all. Are they interested in building apartment buildings? No. The paradigm has changed. We no longer are building that kind of unit. Not one person in the development industry has said they want to build apartment buildings; not one has said that to me.

1350

Mr Marchese: Let me raise another point, because a person came here called Miss Suzette yesterday from 33 Isabella.

Mr Rae: That's right, in my ward.

Mr Marchese: She catalogued a litany of woes from 20 years to the present, where you would think the landlord would be using the money they have been getting for capital expenses, including that extra 3% if there are extraordinary capital expenses to be made, for the kinds of woes they've been having over the last 20 years. But on the other side they say, "But we need it, because the landlords say that unless we do something about the repairs, these things are going to crumble." The question that Ms Suzette was raising is: "They're not spending now. We're in trouble because we have a lot of problems."

Mr Rae: They're paying off the banks because they flip the properties. They're not putting the money back into the buildings. We send out the building inspectors to make sure the new fire code regulations get complied with. My worry is that this government is interested in getting rid of rent regulation and the next thing is going to be moving off from the fire code and the building code and eradicating those responsibilities. Those are the things that cost the developer so much, maintaining the properties for fire and building code, and they don't want to do it any more. They build the condo and they give it to the corporation and it's: "Bye. I've got my money and it's in the Cayman Islands."

Mr Marchese: Can you tell us from your experience the effect this will have on the lowest income people, a third of whom earn less than \$23,000?

Mr Rae: We know that something like 30% of the people who are in the lowest income who were living in apartment buildings have been thrown out through economic removal from their units because their welfare cheques have been cut by 23%. That's downtown Toronto. That's what's happened in this city. There are more people living on the streets and in hostels because of economic evictions caused by the welfare cuts.

Mr David Tilson (Dufferin-Peel): Thank you, Mr Rae. The city of Toronto has some problems with respect to tax assessment and it may or may not be resolved as a result of Mr Crombie's commission that's going around. I'm sure you've read the Lampert report or someone's referred it to you, the provision dealing with mill rates, which the city of Toronto does have control over.

Mr Rae: No, we don't.

Mr Tilson: Actually, you do. Are you telling me the city of Toronto doesn't have control over mill rates?

Mr Rae: You have assessment responsibilities; we don't.

Mr Tilson: I'm sorry, but you have control over your mill rates. That's the question.

Mr Rae: You do the assessing; I don't.

Mr Tilson: I think you'd better check the rules again because the mill rates are applied differently in different cities and the highest is Toronto, according to Mr Lampert at least. And that's one of the reasons, it's been suggested by many in your ward in particular, that rents are out of whack compared to other parts of the province. In the city of Toronto, according to Mr Lampert, rental accommodation is taxed at 4.2 times ownership. The point Mr Lampert is making, as you know, is that rental housing appears to be higher than ownership housing.

As an individual who represents a large proportion of rental accommodation as opposed to ownership housing, my question to you is, because this is an issue, and whether you and I can agree on that issue, what are you proposing to do about that?

Mr Rae: That issue isn't really in front of us but I am on record with the constituents of my ward that I believe rental accommodation should not be assessed at four times what someone who owns a property in north Toronto with a backyard and frontyard and maybe a basement is. They don't have that enjoyment in downtown Toronto, and I think that is wrong. I support removing the commercial assessment that residential properties have, removing it from the commercial sector and putting it into the residential sector.

Mr Tilson: Mr Maves had similar questions on this issue. I guess the fact of the matter is that this whole issue of assessment and the fairness between ownership housing and rental housing is going to come up in the future, whether it's going to come up through your council or whether Mr Crombie is going to raise it, and I presume he will.

Mr Rae: He will.

Mr Tilson: I guess what I'm trying to say, because the city of Toronto is the worst offender across this province on this whole topic —

Mr Rae: Worst offender in what sense?

Mr Tilson: The worst offender across this province on this topic. My question —

Mr Rae: Mr Tilson, the city of Toronto is not the same as Tillsonburg. It's a very different situation. Your government has walked away from providing the services that are needed in a large urban community. You've turned your back. We need that assessment to be able to deliver the services, the schools, the —

Mr Tilson: Are you telling me, Mr Rae, that you're not going to do anything?

Mr Rae: I've already told you what I'm supporting.

Mr Tilson: What are you going to do?

Mr Rae: I've even talked to Mr Crombie about it, that the people who live in high-rise apartment buildings who are paying commercial rates should be paying a residential rate.

Mr Tilson: Are you saying you support the position that Mr Lampert has taken —

Mr Rae: I haven't got Mr Lampert's position in front of me.

Mr Tilson: — that it's unfair that rental housing should be taxed four times what ownership housing is, 4.2 times, in the city of Toronto?

Mr Rae: I don't believe it should be taxed that high.

Mr Tilson: I'm sorry?

Mr Rae: I've already told you that three times now.

Mr Tilson: Okay. Thank you. I'm looking forward to hearing you debate on that.

Mr Bernard Grandmaître (Ottawa East): Councillor, you did say that 70% of the population of your ward were renters and you also had 11,000 condos, and half of them are rented?

Mr Rae: Half of them are in the hands of tenants.

Mr Grandmaître: What is your wild guess: What will happen to 6,000 or 5,500 condominiums after this law is in place?

Mr Rae: I've rented a condo for the last six years, several condos, and they have used the benchmark of the rent control when they've not needed to. They have used it as a benchmark. My sense is with that benchmark gone, they'll just increase the rates; there will be no moral suasion any longer.

There has been this compliance when it was not necessary. In fact, in New York, new apartment buildings that are built comply with rent regulation although they are exempt from rent regulation. It's in their interest because it guarantees them a rent increase. Instead of having to go and negotiate individually with tenants, they opt into the program. If you take away the program here in this province, you'll see the condo market — I'm not sure that you'll see more units built. What you'll see is the units that are on the market increase in their rent.

Mr Grandmaître: But you don't see any more condominiums being built?

Mr Rae: I wish there were more.

Mr Grandmaître: Why wouldn't they build more condominiums?

Mr Rae: I wish there was more development happening in the city of Toronto, but it's not at this time. There are very few applications to build residential property at this time.

They're waiting. I brought the clippings from the Toronto Sun of February 4: Beat the landlord. Beat the system. Imagine how painful paying rent will be when the government takes rent control off. So they're all sitting around waiting like hawks and then they'll decide what to do.

Mr Grandmaître: Also, Mr Rae, I want to take you back. We were discussing Bill 120. I'm sure you're very familiar with Bill 120 because you were one of our guests who talked about Bill 120. I can recall that most

municipalities were saying, "Look, we want more inspecting powers."

Mr Rae: That's right.

Mr Grandmaître: "We want to go into basement apartments; we shouldn't need a warrant," and so on and so forth. "We should respect the building code, the fire code." But most municipalities didn't want to pay for these inspections. Do you think this is fair? If you want the power, you should pay for it.

Mr Rae: It depends on what sector — if you're talking about when I came forward, I think it was Bill 26.

Mr Grandmaître: Bill 120.

Mr Rae: Which was — what was the other name of it?

Mr Grandmaître: We used to call it the basement apartment bill.

Mr Rae: No, I didn't come to that one. I came to Bill 26.

Mr Grandmaître: We missed you then.

Mr Rae: Yes. I didn't come to Bill 120. I support basement apartments.

Mr Grandmaître: But don't you think — and I agree, because half my political life was spent in municipal politics. I wanted the power to inspect, and yet the provincial government didn't want to give us that power. But now, with Bill 120, you had this power but most municipalities were saying, "No, we don't want to pay for these inspectors."

Interjection.

Mr Grandmaître: Why not? It's your responsibility. Mr Rae just said that he keeps getting phone calls.

Interjection: Are you talking property standards?

Mr Grandmaître: Yes.

Mr Marchese: Okay, what do you think —

The Chair: Mr Marchese, why don't you let Mr Rae answer?

Mr Rae: I'm sorry; I wasn't here for Bill 120 so I'm not going to comment on it. I'm here to deal with rent control.

Mr Grandmaître: Was it Bill 26, Alvin?

Mr Curling: Must be. Everybody was against Bill 26.

Mr Rae: I came to speak to Bill 26 and ask for more jurisdiction in inspection with the licensing commissions. They're in the hands of a level of government that doesn't respond to problems and should be in the hands of the local municipalities.

The Chair: Thank you very much, Mr Rae. We appreciate your input into our discussions.

1400

MULTIPLE DWELLING STANDARDS ASSOCIATION

The Chair: Our next presenter is Jan Schwartz, president of the Multiple Dwelling Standards Association. Good afternoon, sir. Welcome to our committee.

Mr Jan Schwartz: My name is Jan Schwartz and I'm the president and general manager of the Multiple Dwelling Standards Association, MDSA for short. Ours is a not-for-profit organization incorporated provincially in October 1970. It is the oldest province-wide landlord organization, whose members consist almost entirely of

investors who purchased their buildings rather than built them. We do not represent builders or developers. Collectively, the membership owns about 62,000 residential rental units throughout Ontario. More than three quarters of the buildings are located in the greater Toronto area.

The majority of our members own just one building. Some of them put their life's savings, or a great chunk of it, as a down payment on a six- or 10-plex. Some others pooled their resources and formed partnerships to buy a larger building of 50 or 60 suites. They came from different walks of life, working in offices, shops, factories, various professions; we even have a bus driver. Many of them still do. Others have a sufficient number of rental units which require their full-time involvement and depend entirely on their rental income.

A substantial number of our members have reached the age of retirement and their rental income represents either the sole or primary source of income, or a chunk of it. A considerable number reside in their own buildings; the smaller the building, the more likely the owner resides there in one of the units. These owners are often referred to as mom-and-pop operators.

Contrary to popular belief, the bulk of the province's rental housing stock is owned by such small-scale landlords rather than by large corporations of builders and developers. In the recently released ministry information package, you will find under the heading "Did You Know" the following information: 80% of rental buildings are made up of four or fewer units, indicating that the bulk of landlords own small buildings; only 23% of rental units are found in large, high-rise buildings of 100 or more units. It's all in the ministry's package.

To conclude my opening remarks, I would like to stress the point that rental housing has been an accepted part of the investment activity in this province for many years. Of course, in 1980 a new government came in with different ideas.

Concerning the discussion paper itself, we will respond with a more detailed written submission shortly. Today, due to the time constraints, I will limit my remarks to just a few issues which cause our members grave concern.

First, vacancy decontrol: We call it decontrol-recontrol. It has been confirmed by rent control administrators that in the last couple of years applications for above-guideline increases, for all practical purposes, have disappeared. Double-digit rent increases are a thing of the past. Today, when tenants move, the owners are lucky if they don't have to reduce the rent. A vast majority of rents across the province, including Metro, are now below the legal maximum level. It's the market that has become the ultimate protector of tenants. The market has done a better job in this respect than any of the rent control systems in the past, including the current one initiated by the Rae government.

In view of this, it is hard to comprehend the argument that upon vacancy rents will go right through the roof. I've heard in the last few days' time, over and over, "Landlords will charge what they want." It was repeated like a broken record.

Mr Marchese: And we'll repeat it again.

Mr Schwartz: Such talk is nothing but scaremongering propaganda, and you may continue it as long and as often as you want. Only a few chronically depressed units may be subject to a higher increase, but this could be fixed by a reasonable cap of 5% to 6% per annum and phased in over two or three years. However, in practical terms, tenants in these units sit tight; they hardly ever move. Why give up a bargain of a lifetime? The turnover occurs in the higher-priced units and the market takes care of the overpriced cases. A number of rents have been reduced in the last year or two. Frequently, landlords skip increases altogether because vacant units are rather costly.

The next problem, agreements between landlord and tenant to be legalized: That seemed like a good idea. At last, we thought, common sense has prevailed, but this measure may turn out a half-measure if a cap is introduced. It is hard to comprehend why government intervention is necessary when two adults have reached an agreement. Needless to say, the agreement must be voluntary. We do not object to a cooling-off period, which is common practice in other cases. The argument that is sometimes brought up by tenants' spokesmen that tenant and landlord are not equals and cannot make free agreements I'm afraid is an insult to any renter.

Next, discrepancies and variances in rent levels within a building ignored: It is not uncommon in today's market that some tenants of a one-bedroom unit pay \$50 more than their neighbour living just next door pays for a two-bedroom with two parking spaces. You can imagine how that tenant in the one-bedroom feels, especially when his neighbour has a better job and a higher income. The landlord is absolutely powerless to help in this scenario. We suggest that an application for equalization be introduced whereby a guideline, like 2.8%, could be allowed for the entire building, and under such a scheme similar units will have similar rents. The landlord would apply, suggest how he proposes to apply the 2.8% guideline for the building and redistribute it in a more equitable way.

It was too late for me to include it in writing, but I was told half an hour before I came here about a case where an elderly widow got a discount of 10% and paid \$300 instead of \$330, going back to 1974. After 20 or 21 years of rent control, that difference of \$30 has grown to \$92. It just gives you an idea how these inequities originated.

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A cap of 5% above guideline would prevent any unreasonable increases and a phase-in over two or three years would eliminate the existing inequities. We did have, under the Liberals — and Mr Curling, I'm sure, remembers — equalization, where these discrepancies could gradually be narrowed down and eventually eliminated.

Finally, a word about what we call professional tenants, who use the present Landlord and Tenant Act to fleece unsophisticated owners: The Landlord and Tenant Act must be overhauled to prevent unscrupulous so-called professional tenants from taking advantage of the law and cheating mostly small-scale landlords out of five, six months' rent, which is not unusual, particularly in Metro.

We landlords don't like to go to the courts; we use the courts as a last resort.

The more sophisticated corporations are right on top of things. If a tenant doesn't pay the rent on the 1st or 2nd, bang, they have special staff who will serve him with form number 4 and thus minimize the loss to one month, two at the most. The small landlord doesn't operate that way. He's not going to serve the tenant on the 2nd, 3rd or 5th with an eviction form. He'll wait, he'll try to be helpful, and of course he's being taken advantage of. Before you know it, it's the end of the month and he still hasn't paid and the next month comes along. The form which is being used now, number 4, says you don't have to move for another 20 days. This is just like giving another month of free rent. It just doesn't make sense. Why, when he already owes you two months' rent, do you have to give him another month free? We believe those 20 days should be cut in half, to 10 days. There's no need to give them an extra free month.

Another problem that we find is bothersome is this maintenance business, which smacks of some of the worst political regimes that many of us endured some years ago, before we came to this wonderful country. This kind of treatment, where there is no warning, where just a breach of a standard is enough to be ticketed and fined hundreds of thousands of dollars, especially small landlords, some of them ethnics who don't quite understand everything the way they should — I think the proposal in this paper that it should go straight to a work order without any advance warning is absolutely unacceptable.

I'll leave a few minutes for questions.

Mr Morley Kells (Etobicoke-Lakeshore): Mr Schwartz, it's good to see you again. I'm interested particularly in your statement that a vast majority of rents across the province, including Metro, are now below the legal maximum level. Does your organization have any documentation to back that up?

Mr Schwartz: We're constantly in touch. We talk to our people. We ask them. We exchange information and opinions. Right now, when a tenant moves, first of all we have to spend about four times as much on advertising as we used to before. These are mostly older buildings — 25, 30, 40 years old. In spite of what we hear about low vacancies, you pick up the newspaper on a weekend, Saturday, and you still see all kinds of ads in the papers. Prices are reasonable. I've seen one- and two-bedrooms between \$550 and \$750.

Mr Kells: I really don't have any argument with your contention. You have an organization, as you describe, of small owners, but you have constant communication with them. It would seem to me that it would be in your best interests to at least take some kind of survey on rents that you can use. In other words, we hear the same statements all the time from, if you will, the other side of this equation. When I see a statement like this, which I believe, because I believe it from what I see in my own riding, I think it would be in your best interests to take at least some kind of survey that would back up your contention that the majority of maximum rents aren't being reached.

I'm more interested, if I have time — we have the argument that developers will not build any more rental

accommodation. I'm wondering, because you're somewhat between a developer or, as you've made a point, removing yourself from the developer class, what do you think it would take for the development industry to start building again?

Mr Schwartz: As I said, and you confirmed, I'm not a developer or builder. We're in a different class. They have other options; we don't. What I mean by this is, a developer or a builder doesn't have to build rental units. He can build condominiums, he can build hospitals, he can build hotels. He doesn't have to stay in Ontario. He can go to Florida or Alberta, anywhere.

Mr Kells: Let me try it again —

The Chair: Thank you very much, Mr Kells. Mr Curling.

Mr Curling: Mr Schwartz, you were just right on in answering Mr Kells there.

Again, I want to thank you for presenting. You have been an advocate for the small landlords for a long time and have done a very good job.

Mr Schwartz: I served on your committee, the Rent Review Advisory Committee.

Mr Curling: You did so, and very effectively, sir.

One of the most challenging areas that we had in those days was the small landlords, as you said. Most of those units are rather difficult and have more difficult challenges than the larger landlords. In answering Mr Kells a minute ago, maybe — I think he knows the answer too, that many of those larger landlords or developers will not build because there's not an effective market out there for them. As you rightly said, they can build other things, because I for one don't believe at all that they are suffering in that aspect. I know they have great challenges out there that would like some more returns.

Do you think by this new direction that they're going on, the only purpose is to build affordable housing? Will they change their minds after they have gutted rent control, that they will start building on the one hand?

Mr Schwartz: I'm sure you've listened, and I've heard their arguments too. They were saying, and I agree with that, that this is only a first step. It remains to be seen how far the government is willing to accommodate. I don't want to be repetitive, because it has been said over and over again, what are the requirements that have to be met in order for them to build. They are businessmen. They are not doing it for altruistic reasons. It has to make sense, business sense. No matter what business it is, building or whatever, you have to make a certain profit.

Based on the market rents today, it's very difficult to build unless you can get a rent of, what, \$1,100, \$1,200 a month, and that becomes —

Mr Curling: Would you support —

The Chair: Thank you, Mr Curling. Mr Marchese.

Mr Curling: Oh, my. This is short.

Mr Marchese: Mr Schwartz, we don't disagree in your statement here where you say that "a vast majority of rents across the province, including Metro, are now below the legal maximum level." I have not disagreed with that. I don't know what Mr Kells was talking about, but we think that's true. So if that is the case, why do we need to decontrol? Why do we get rid of rent controls, if that is the case?

Mr Schwartz: Because market conditions change. Things are not the same today as they were a year ago or two years ago or three years ago. If you were to ask me what I think will happen in the future, I do not foresee in the next two years, the foreseeable future, that there will be a sudden change. I think rents will stay more or less where they are now.

Mr Marchese: But if that is the case then, controls don't hurt you and they protect tenants, because they feel they're protected. So why not leave the system —

Mr Schwartz: The market protects tenants.

Mr Marchese: No, no. We take it a different view in this regard.

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Mr Schwartz: Well, that's what I said. I thought you agreed with me.

Mr Marchese: No, no. You're saying you agree with getting rid of rent controls, and I'm saying if you're not getting up to the maximum, keep rent controls. Because they don't affect you — obviously you're doing okay — but the tenant feels protected. That's what I'm saying. You're not saying that.

Mr Schwartz: I said that —

Mr Marchese: I know what you're saying.

Mr Schwartz: You know what I said?

Mr Marchese: I read it.

Mr Schwartz: You have a copy.

Mr Marchese: Yes. It says —

Mr Schwartz: I said that the market has done a better job than your legislation.

Mr Marchese: That's what they say, and I'm disagreeing with that.

The Chair: Thank you, Mr Schwartz. We've enjoyed having you here this afternoon. We appreciate your input.

DAVID HULCHANSKI

The Chair: Our next presenter this afternoon is David Hulchanski from the Centre for Applied Social Research, faculty of social work, the University of Toronto. Good afternoon, sir, and welcome to our committee.

Mr David Hulchanski: I have a seven-page set of comments which you have before you. I'll only speak to some of what's on those pages. There are four attachments to those pages, sort of an appendix. I hope to have time for discussion.

I'm a professor, as you noted, at the University of Toronto in the area of housing policy and community development. In the 1980s, I was a professor at the University of British Columbia in Vancouver. It was in 1983, the year rent controls were abolished in Vancouver, that I became an assistant professor in the school of planning there. I was director of research for the UBC Centre for Human Settlements at that time. We carried out some research on the impact of rent decontrol in British Columbia. In 1984, I was a consultant to the Ontario Commission of Inquiry into Residential Tenancies; 10 years ago, the Thom commission.

So what is the problem? Why are we here today? I agree with the introduction to the consultation paper that the trouble is due to the fact that "the private sector has no interest in investing in rental accommodation." This is

the central thing: The private sector has no interest in investing in rental accommodation. I think we all agree on that. But then, what happened to market demand for new rental supply?

There's a supply-and-demand equation in any market. If we agree there is no private sector supply, what happened to private sector demand? In order for a good or service to be supplied on a market basis, the demand needs to be — what? — effective market demand. Consumers have money in their pockets. Any business plan that a bank looks over includes an analysis of the number, type and price sensitivity of potential customers. If there are not enough customers able to afford a particular product, there can be no long-term viable business supplying such a product.

This is the heart of the issue. There's all kinds of other things being said here, but this is the heart of this issue. Where are the paying customers for new rental supply? "There aren't very many," is the answer of course, because the income gap between owners and renters is huge and has been getting larger.

This was not always the case. This was not the case in the 1960s. Okay? Right now the gap is something like 80%. The median income of homeowners in the province is in the \$60,000 range — this is household income — and that of tenants is in the \$30,000 range. It depends on different metropolitan areas. It's close to half; tenants have close to half the income.

The gap was much, much smaller in the 1960s. Remember, there weren't condominiums in the 1960s. That was introduced in the early 1970s, the opportunity to own an apartment. You creamed off higher-income renters into the home ownership sector by doing that, so you lost customers for new construction.

Furthermore, what has been going on is that the real income of renters has decreased since 1971. We have census data from 1971. Compare them to 1991, hold things constant for 1991 dollars, and tenants have lost real income; homeowners have gained real income.

How can a tenant or a potential investor in rental housing compete with those odds? The people with the money are in the ownership sector, and the ownership sector can always outbid. A condo developer can always outbid somebody building rental housing for a piece of land because the population they're going to house has a higher income than the population that the investor in rental housing will attempt to house.

What we have in Ontario is a great deal of social need, more than effective market demand. This is my whole point, really: Where is the effective market demand for new rental housing in this province? There are customers without enough money. That's what's happening here.

That's not the case with the ownership sector. Supply and demand works in the ownership sector. If you have decreased demand, supply happens because it's effective market demand. When people stop buying for various reasons, supply stops and there's just a lag for those two things to catch up. They've never caught up in Ontario.

There's been an unfortunate attempt to rewrite history over the recent 15 to 20 years in Ontario. Which came first, rental market failure or rent controls? Ontario's rent controls were introduced in July 1975. The government's

consultation paper contains an appendix with some helpful graphs explaining why a Conservative government in 1975 had no choice but to respond with rent regulations.

When you look at those, you see that vacancy rates fell dramatically from 1971 to 1974, from 3.5% to about 1%, a dramatic fall before 1975. You also see from those graphs that rental starts fell. They were building 60,000, 50,000, 40,000 per year in the late 1960s. In 1972, it was 40,000 and it fell to a couple of thousand in 1975. These things, again, happened before the introduction of rent controls.

Finally, the CPI was just of course climbing dramatically, starting in the very early 1970s, peaking in 1981, and that just threw everything up. As I say here, it changed all the normal economic rules of the game for building, especially rental housing.

What we have in Ontario is market failure in the rental sector and we've had it for a long time. There aren't enough paying consumers. These are negative macro-economic conditions which have combined to bring us to this point. It's not some regulation or some individual action here or there. It's a whole combination of macro-economic conditions.

Some of you will remember the oil shock, the energy crisis in the early 1970s and all the things that happened. I moved to Toronto in 1972. The city could still buy houses for \$3,000 or \$4,000 in 1971-72 to clear land for a park. By 1975, it was around \$40,000, \$50,000, the inflation in house prices.

We find not only in the consultation paper but elsewhere numerous insupportable claims about the negative impact of rent controls and there's no reliable evidence on these things. I know the literature on this. I cite some of the literature. I didn't make this an academic paper, but I do cite a couple of things.

Building maintenance is supposed to be discouraged. Where do we have evidence of that? We have evidence of a very healthy buying and selling of existing rental stock. Just like a homeowner, somebody who wants to keep the property value of their rental building up will maintain it because they want to sell it and get more than somebody who doesn't maintain it. It's that simple.

We have a situation where some landlords maintain their buildings really well and some don't maintain them well, and any changes that are being proposed here aren't going to change that. Those who maintain buildings will and those who haven't have their reasons and they will continue not to.

Then there's the claim that construction is discouraged, but how can construction be discouraged if there's no effective market demand out there? Macroeconomic circumstances have discouraged construction, not other things. These difficult times that resulted in rent controls in 1975, as I said, happened before rent controls. They're not the result of rent controls.

Imagine if you could take a million households and lock them up for 15 years and run an experiment on them. Well, they didn't lock them up, but British Columbia in 1983 did away with rent controls. They did everything they were told to do by conventional economists. The minister said, "These deregulatory measures" — that

was in 1983 — “will ultimately result in new real estate development, more jobs and a continuing healthy availability of rental accommodation.” It’s more than a dozen years later. Last year, the government published a report on rental housing saying, “British Columbia is home to the lowest vacancy rates and some of the highest rents in Canada.” Not much changed except rents went up in British Columbia. There was no new rental supply.

So what’s the rationale for rent regulations? It’s regulatory protection due to this market failure. I outline here that there are in fact four reasons to have rent controls when the market isn’t working. When the market’s working, you have vacancy rates of 3% or 4%. Let’s say you’re a landlord and you have one vacant unit for one year. That’s \$800 a month, let’s assume. It’s vacant for one year. That’s \$9,600 per year in lost rent. Let’s say you’re a big landlord and you have 500 units. That’s not too big, but you have a 4% vacancy rate. That’s 20 units. That’s \$192,000 a year lost, a severe fine for landlords if they’re unable to attract and keep tenants. That’s the way the market protects tenants, by having a 3% or 4% vacancy rate. We didn’t have that in the early 1970s before rent controls and we haven’t had it since.

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Given this, there are four rationales for rent regulations. I wrote these up in a report for the Thom commission, *Market Imperfections and the Role of Rent Regulations in the Residential Rental Market*, 1984. One is security of tenure, to protect tenants from economic evictions. If the rent is raised and they can’t afford it, they have to move. That’s an economic eviction. Maintenance of the affordability of the existing rental stock is another reason for these regulations, as are prevention of a regressive income redistribution and mediation of conflicts relating to rental tenure.

I won’t address three of these in the interests of time. I’ll just mention one: the prevention of a regressive income redistribution. If the market is not working, what is protecting tenants from being taken advantage of? The primary landlord-tenant issue is the amount of the monthly rent. The government’s proposals not only allow but encourage a massive transfer of money from tenants to those who are lucky enough to own rental property in the province.

Let’s assume conservatively that only one third of Ontario’s 1.3 million tenant households, so only 430,000 households, will pay higher rents due to rent decontrol upon vacancy in the coming three years — make it four years, whatever — and that the monthly increase is only \$100. Only a third are affected and only by \$100 and only over three years. That’s half a billion dollars; a \$520-million transfer of money from tenants to landlords, a redistribution for what? What will the tenants receive for this money? How will paying additional money to existing owners — remember, existing owners — result in an end to market failure, the assumed ideal of supply and demand and equilibrium and all that? How will we get that by having some tenants pay extra money for their existing units?

There’s a trickle-down assumption here that I address. One of my appendices has two pages on this that I wrote for the Thom commission. It’s assumed that you build

some units for high-income people and that the renters will leave their rent-controlled units under this proposal for these higher-cost units, freeing up the rent-controlled units, which of course are now rent decontrolled, and then a lower-income tenant can somehow move into there. This is called filtering of the housing stock. The older stock goes to lower-income people, higher-income renters get the better stock and all that. But you note the income pyramid for tenants, as in owners, is a pyramid; there are very few people at the top. There can never be enough units built for people at the top for that to happen, for units to filter down.

There have been 20 years or so since any research has even been done on this. It’s just one of those throwaway theoretical things, assuming an ideal world and all that. This kind of thing doesn’t work. I offer some documentation there.

I’ll conclude now. I find many assertions rather than evidence throughout the consultation paper to back any of this up. Certain rules and regulations or legal protections do not work. We’re told they’re harmful, they’re inefficient, they provide barriers and all this. Where’s the evidence for these assertions? Where’s the analysis that the proposed new regulations will be better than the existing ones? There isn’t any.

The assertions are followed by proposals that benefit owners of existing rental stock, mainly larger corporate owners. There is no conceivable way that tenants will be better off. There will be no significant supply of new rental units because the problem is a lack of effective market demand. It’s not rent controls. It’s not these regulations.

The number of tenants forced out of housing altogether will continue to grow. This is happening a bit already because of the negative macroeconomic conditions. This will only worsen the situation that people are increasingly calling dehousing. A process of dehousing is taking place where people lose their housing, double up or end up in shelters or on the street. These proposals will harm the most vulnerable tenant households in the province.

I believe there are four certain impacts of the current proposals.

One is rent gouging, the transfer of a huge amount of money from tenants to owners with very little, if any, benefit in exchange. There’s nothing fair about that, to pay more and get nothing more.

The second impact is dehousing: the harassment of some tenants by some landlords — only some, but how many; more than two or three? — so as to obtain vacant, rent-decontrolled units to either raise the rents or to convert and all that.

A third outcome is demolition and conversion of rental stock. Even tighter vacancy rates will result due to the loss of rental stock once the Rental Housing Protection Act is changed or abolished.

Finally, there will be at least a temporary glutting of the condo market, especially the middle and low end. There will be construction job losses, a potential decline or stagnation of property values for some condo owners, a potential loss of new municipal tax base as existing rental units are converted to condominiums rather than having the new, more expensive construction built

because the converted rental units will be cheaper. They can compete and beat any new construction of low-end condo units.

There's another thing you have to estimate: the cost to the municipal tax base and to homeowners' taxes when rental units become condominiums because then they're taxed at a different rate. So there's a loss of tax base there.

To arrive at the conclusions I'm arriving at, we need simply examine the patterns of rational economic behaviour. What will people do? What is in their rational economic interests under the proposed new regulatory environment? That's all you have to do.

In summary, rent controls and the related tenant and rental stock protections that currently exist are a response to the problem of inadequate supply. They are not the cause of the problem.

This committee should recommend that these proposals be scrapped and that new proposals for rental housing supply be brought forward based on a recognition of the problem of the lack of effective market demand among Ontario's tenant population. Let's address the problem. Thank you for your time.

Mr Grandmaître: I want to talk to you about the failed BC experiment. You agree that the private sector is not interested in providing more rental units to keep the vacancy rate quite low so that the low level can be taken advantage of. What is the responsibility of the provincial government in Ontario, not to compete with the private sector, but to provide safe and affordable housing? What is the role of the government?

Mr Hulchanski: There's a nice philosophical question. The role of the government is that when something isn't working and people are being harmed by something happening out there which we can do something about, we try to do it. If we know people are dying of some disease, some private sector firm may not come forward to stop that, but somebody representing all the people comes forward to do it. That's the role of government.

In the home ownership sector, what's the role of government? Little things even things out. In a market that doesn't work, where we have a third of our population and half the population of a place like Metro Toronto living, there's a role for government to pay attention to those problems.

Mr Marchese: Thank you, Mr Hulchanski, for helping to demystify some of the concepts and assumptions that have been made by the proposal. Given that there's only a minute, there's not too much time to ask questions other than agreeing with those statements you made, that there is going to be, as a result of this proposal if it ever becomes law, a shifting of money from tenants who are largely poor or relatively lower-income folks to landlords who are doing relatively okay.

Mr Hulchanski: They own property, whatever. Right.

Mr Marchese: The other comment you made is that there will no significant supply of new rental units because the problem, the lack of effective market demand, is not even recognized. Even if we bailed and gave away the whole shop, put out the red carpet and got rid of development charges, equalized property taxes, halved the

GST, eliminated provincial capital tax, with all that, we're still not dealing with the demand.

Mr Hulchanski: I ask, where are the paying customers? There will always be a small niche market at the upper end, so some units could be built if you did all that.

Mr Bart Maves (Niagara Falls): Thank you for your presentation. You mentioned that several economists in BC told them what they thought should be done: decontrol. I note that there have been some other folks here who've talked about economists and countries that have had controls, and some of their comments have been, "Rent control appears to be the most efficient technique presently known to destroy a city, except for bombing." A university of Chicago economist said, "If educated people can't and won't see that fixing a price below market level inevitably creates a shortage, it is hard to believe in the usefulness of telling them anything whatever in this field of discourse." I understand that there are many economists who see it in a different way than you do.

I want to address your market demand. It seems correct to me, because 50% of landlords right now are charging less rent than they could be charging. That indicates they can't get that rent, so they're not charging that rent.

The Chair: Thank you, Mr Maves. Unfortunately a minute goes by so quickly. Thank you very much, sir. We've enjoyed your presentation this afternoon. We appreciate your interest.

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RUTH HARPER

The Chair: Our next presenter is Ruth Harper. Good afternoon, Ms Harper. Welcome to our committee.

Ms Ruth Harper: Thank you. Mr Chair, Is it permitted to generally comment on comments that have been made previously?

The Chair: You can do whatever you want with your time.

Ms Harper: I'll probably refer to comments made previously when I talk in general.

I want to applaud the current government's plan to make changes, and ask to simplify by combining I think six different pieces of legislation. That can only confuse, rather than simplify and make it easier for everyone to understand legislation and law.

Reading the discussion paper, I pause over certain parts of it. I'm very concerned about parts of it, and two particular parts of it saddened me and in the end made me quite angry. The issues of finance and economics and legal proceedings I'm going to leave to people who understand them far better than me. I will not pretend to understand macro- or microeconomics or other such issues.

For eight years I've worked in the management office of an apartment building, 14 storeys in Etobicoke. The office is located in the lobby of the building and has an open-door policy. It is not just in my position of manning the management office but also in my awareness of the media today, and in the past few years it's very clear to me, as I'm sure to most people, that right now there's a

very ugly stereotype about landlords, management and superintendents. This is not to deny the fact that there are bad landlords, bad management and bad superintendents, as there are with any occupational group. But previous comments have perpetuated, by saying tenants are largely poor and landlords are largely well off, the stereotype. I hope all of you are aware and I don't need to waste time to go into the details of what I call the ugly stereotype.

The ugly stereotype also is perpetuated by previous comments that — I've forgotten the amount — transfers of millions of dollars of rent will be taken from tenants and given to landlords, and this is rent gouging. Let us not forget what the landlord or management company must do with those millions of dollars. They pay taxes, they pay all the utilities in many buildings such as mine and they pay for repairs and maintenance, whether it's in-house staff or outside staff. The landlords would be left, I am sure, if a proper accounting was taken, with a lot less than these millions of dollars that were previously mentioned as being transferred from tenants to landlords. You cannot simply say that so much is paid in rent and this is the landlord's money. The landlord has an obligation, the biggest of which is to mortgage companies.

This stereotype, in my opinion — this is what angers me about your proposed legislation — unfortunately is perpetuated by your legislation, and I'm not saying this facetiously. In the areas talking about harassment and maintenance, it saddens me to see that there is no mention of the tenant's responsibility. Maintenance of a rental unit — the landlord does not live there. I don't happen to live in that building and some of the maintenance staff do not live in that building. Who lives in the apartment, who uses the apartment and who, according to the Landlord and Tenant Act, has a joint responsibility with the landlord to help maintain that unit? But when it comes to the section of your proposed legislation about maintenance, I only read things about the landlord.

Unfortunately, currently there is no recourse in current legislation or law for an outside agency such as a building inspector to direct the tenant to clean up the greasy stove that caused the oven fire, which caused the stove not to work, which caused it to be replaced, and because the landlord owns the stove, the building inspector has no choice but to cite the landlord and to say the landlord must replace. If a stove is so dirty, just to give a very simple example, I do not think this tenant is fulfilling the responsibility of what I think is called "ordinary cleanliness" or "good housekeeping" as according to the Landlord and Tenant Act.

I would like to just make a footnote here. I'm not talking about the vast majority of tenants. I'm talking about a very small number of tenants, just as I believe the proposed legislation is talking about a small number of landlords. That is why we need the legislation, for the small number of landlords who do not maintain. But you must also please change the legislation to address the issue of tenants who do not fulfil their responsibility for good housekeeping.

The other part of the proposed legislation that I believe perpetuates the stereotype is the harassment issue. As someone who is there five days a week, and I interact almost hourly on some days with maintenance staff and

the superintendent, tenants are not the only ones who get harassed, and yet you read the proposed legislation and you would think that tenants are the only ones who ever get harassed. My goodness me. Supers? They're never harassed. No one ever bangs at their door drunk, threatening them, at 2 in the morning. Nobody ever comes into my office swearing and cursing at me. It was the only time I know of it in the eight years, but my super last year was attacked, completely unprovoked, as she was bending down to put a wood wedge in a door so she could vacuum.

Please do not, through your proposed legislation, perpetuate the stereotype that is false. If necessary, recognize in a preamble to the legislation that there are bad tenants and there are bad landlords, and I would be the first to admit there are some very bad landlords. But right now, as the legislation stands, it does not recognize that there are indeed a few bad tenants with regard to harassment and maintenance, just as there are a few bad landlords with regard to harassment and maintenance.

Mr Marchese: Ms Harper, I don't disagree with what you're saying at all, because all of us know that there are some bad tenants and bad landlords, but if that's what we need to deal with, then let's deal with that.

The guts of this proposal is to eliminate effectively rent control. We disagree with that profoundly, because we think it will hurt tenants. The other part of the guts of that proposal is the removal of the rental housing protection, because it's going to get rid of a lot of rental accommodation, affordable rental accommodation. That's really what draws the conflict in this discussion, because the Tories say, "The opposition comes; they have nothing good to offer."

When they introduce a proposal that effectively tears the guts out of something that tenants have fought for, that I and other colleagues have fought for, then we have conflict. If they introduce something that says, "How do we deal with the bad tenant? How do we deal with the bad landlord?" then we can talk about that, but that's not what's before us. What's before us is something that profoundly changes what has been fought for for a long decade. That's where you get a lot of strong disagreement.

I have no problem with you when you say we should deal with the fact that some superintendents get harassed — that's not nice; some tenants get harassed by landlords — that's no good; and some landlords are not good landlords because they don't do the repairs. We should talk about that, but this proposal doesn't deal with that, you see.

Ms Harper: I feel the proposal does deal with the bad landlord with regard to the enforcement unit with respect to harassment and the changes with respect to building inspectors' powers and what will happen, for example, in the proposal with ticketing and applications for rent reduction, in harassment cases etc. I respectfully disagree with you. The legislation does deal with bad landlords; it does not deal with bad tenants in the same way.

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Mr Marchese: I respectfully disagree with you as well. I don't know if you were here listening to what Professor Hulchanski said earlier on. I agree wholeheartedly with his entire presentation, and with respect to the anti-

harassment unit and strengthening that, we've heard from countless seniors and people who represent the disabled that it's not an equal match here. If some landlord, some bad one, decides to harass you, the fact that you have a serious anti-harassment unit is not going to help that 75-year-old lady who we are told by seniors is very intimidated by those who have power and in whose care they find themselves. They're not going to go out and complain to this anti-harassment unit so they can get that big fine, because they're frightened. So although you think that's there and it's going to have an effect, a lot of seniors are saying, "That's not going to help me."

Mr Harry Danford (Hastings-Peterborough): Thank you very much for your presentation. I appreciate your comments about the stereotyping because I think we've all heard, certainly in the few days of hearings we've had here, and we understand that tenants are not all necessarily low-income and landlords are not going to incur huge increases. I think that's a fair statement, and the numbers in those categories are probably quite small. What's trying to be obtained is a balance.

I'd be interested in your comments very briefly: How do you propose and what specific things would you do to change that, to provide the balance so that we could stabilize between those two segments?

Ms Harper: In general, you mean, with rent control? My main concerns about rent control are not about rent increases. For example, the current unit of what they call rent control — not unit, but department or ministry, section of the housing ministry — in itself is used to harass landlords with false applications, or applications that prove groundless, I should say, for rent reduction.

I think the current rent control is such a large beast, and rent increase is only one part of it. I think that to recognize the responsibility in basically what is a rental agreement, albeit a rental agreement regarding a necessity, but a rental agreement, it must be fair to both parties. When it comes to rent increases, I don't think we'll ever be able to do what is fair for both sides, because right now, as will happen from time to time, we are in an economic slump. However, costs of certain items, if you want to call it that, that landlords must buy or pay for are not decreasing each year. However, wages are not necessarily increasing or even remaining the same. So in a sense, the economics that we face at certain times in Ontario will certainly aggravate the disagreement between tenants and landlords. But I don't think we should be blind to what is aggravating the situation. It's not that private landlords own buildings; it's that we are in bad economic times and wages are not increasing. They were in the early 1970s.

I think that, as the previous speaker mentioned, there are other economic factors at work here, and those must be kept in mind when you're trying to get a balance.

Mr Wettlaufer: Ms Harper, thank you for appearing today. I was particularly intrigued with your comment about some tenants not keeping stoves clean and what have you. I used to insure a lot of apartment buildings, and I have inspected many of them and have seen what some tenants do to some buildings. I wonder if you could give us an idea of the percentage of your costs each year

which goes into maintenance as a result of tenants' misbehaviour, shall we say.

Ms Harper: I couldn't give you an exact percentage. It would be fairly low. This is not a major cost, fortunately, in our building. At the same time, although it is not a major cost, to me it does not in any way lessen the unfairness of the situation. I understand from other people I have met that in some buildings it is a greater percentage of their total cost. I believe that in my building I am very fortunate — for whatever reason, I'm not sure. But I don't think the percentage of the cost is really the only factor that should weigh whether or not the proposed legislation should consider this point. I think it is the fairness. Many people, in talking about rent control and rent legislation, talk about what is just, what is right, what is fair. I think those words apply to that issue also.

Mr Grandmaître: I agree with you that there is a joint responsibility between tenants and landlords, because I would say that 50% of my phone calls in my constituency office are about bad landlords, and another 50% are about bad tenants.

My question is, in your eight years of experience as a manager of a major building, do you think that rent controls in the province of Ontario have worked?

Ms Harper: Worked to what end?

Mr Grandmaître: Everybody's advantage.

Ms Harper: Because of my personal experience, I would have to say no. I not only work there, but I am one of the eight partners who bought the building. Another building, for example, which was in the city of Toronto, we bought with eight other people and we lost. Rent control has impacts, and every time a government changes the legislation, it will impact. The current government changed the legislation and it had a major impact.

One day I was at an acquaintance's house and she was waiting for the sheriff to come. Because of the previous government's retroactive cancellation, they lost the buildings, they lost her house. Basically, she was totally bankrupt. This had been her source of income, her job, so not only losing your place of residence but losing your job and losing everything.

I have seen that side of small landlords. I've seen landlords in the last six years who have gone bankrupt. I'm not talking big landlords; I'm talking small people who have other jobs, and certainly not jobs in upper management. They don't wear suits to work. I have seen that. So I, through my own personal experience, cannot say to you that I think rent control has worked because of my personal experience and the experience of people who I call friends and acquaintances.

Mr Grandmaître: What would be the vacancy rate in your own building, the average, let's say, over the last five years?

Ms Harper: Until last year, we never had an apartment go empty. We've been very fortunate. Last year I think we probably had maybe three months total of an apartment being empty; not the same apartment, but total. This year so far we've had two months.

Mr Grandmaître: What's the average rent of the one-bedroom and two-bedroom?

Ms Harper: The parking charges are separate, but since many people have a parking space, I'll tell you with parking, and it includes utilities but not cable. The one-bedroom is \$789, the one I'm currently renting for October 1 that's being advertised, and the two-bedroom that's currently being advertised for October 1 is \$949.

Mr Grandmaitre: Do you agree that rent controls should be abolished?

Ms Harper: I don't think there should be no legislation that applies to the area of rental housing. I think it has to be fairer in the ways I have spoken about in accepting that it is a joint responsibility. I think it should not perpetuate stereotypes of any kind. I think the difficulty is when, as I said before, the beast becomes too unwieldy. Rent control is necessary because there will always be a few bad landlords and a few bad tenants, and it is for those people that I believe the legislation is necessary.

The Chair: Thank you, Ms Harper. We've enjoyed your presentation and we appreciate your interest.

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MARTIN ZARNETT

The Chair: Our next presenter is Martin Zarnett. Welcome, sir, to our committee.

Mr Martin Zarnett: My name is Martin Zarnett and I'm a lawyer practising in Toronto. A substantial portion of my practice relates to housing law, including mortgage enforcement, condominium work and residential landlord and tenant law. Unlike many who will speak to you during these hearings, I represent both landlords and tenants, although primarily landlords.

Today, I will confine my comments to the dispute resolution procedure and not to the other related issues such as rent control, property tax reform, Rental Housing Protection Act reform etc, although I will briefly touch on these areas in conclusion. As a practitioner in the field, I will give you my assessment of what works and what does not work.

Contrary to what you may have heard, the system relating to the resolution of landlord and tenant disputes under the Landlord and Tenant Act is not broken. In fact, having regard to the alternatives, it merely needs to be streamlined to provide for more efficiency.

I have prepared a three-page response to the discussion paper which I hope you will find helpful in your deliberations. I have three main points to my presentation: (1) maintain protection for landlords and tenants by maintaining the court; (2) reform and streamline the system and eliminate certain hearings; (3) utilize your well-trained court staff and local registrars and permit mediation and dispute resolution.

To expand upon these points:

(1) Maintaining judges in the system: Both landlords and tenants benefit by having non-political decision-makers adjudicating disputes. These decision-makers are section 96 judges. This is an important protection that should not be lost for either landlords or tenants.

No one would think about transferring mortgage disputes to a tribunal, although the result, being the loss of a person's home, is the same. The fact that the arrears

of rent may be \$1,000 or \$2,000, in my view, is one small cost in an eviction proceeding. A significant portion of the costs that tenants incur is not reflected in a judgement that a landlord obtains.

Conversely, landlords want to be assured that decision-making bodies are making decisions relating to evictions on an independent basis. This is one of the factors that any investor would examine before determining to invest in residential rental property in this province. For all of their perceived faults, I know of no other organized decision-making body short of settlement that produces better results in the long run than judges, who have no political interference because they are appointed for life.

(2) Streamlining the procedure: 80% to 90% of the cases heard by the courts relate to arrears of rent. A significant proportion of those cases where hearings are booked come before the local registrar and are dealt with by way of default judgement. Further, any time that a tenant appears the matter must be heard by a judge, no matter how frivolous the dispute.

To reform the system, arrears cases and non-arrears cases must be streamed into two separate categories. Arrears cases should proceed to the court office, supported with evidence of arrears such as an affidavit of the landlord's representative, and the landlord should be entitled to judgement without a hearing. Notice periods in a notice of termination should be reduced from 20 to 10 days.

To provide for tenant protection, judges should be given the ability to impose sanctions and refund rent if the landlord's representative misrepresents or misstates arrears. So the judge will have a very powerful tool in dealing with landlords who transgress this particular procedure. Further, tenants should be permitted easy access to set aside such "without notice" judgements upon proving that they have paid the rent to the landlord or by paying the money into court after they have been served with the judgement or the sheriff's notice to vacate to stop an eviction.

This simple change would save between 50% and 75% of the present cost of operating your system, as every dispute at the present time must have at least one hearing. Landlords, of course, would have to be extremely careful in the preparation of their applications due to the significant consequences of providing false material to the court. Tenants would be required to complete minimal paperwork as mandated by legislation should the landlord not be truthful in his materials. The cost of running the system would be dramatically reduced.

Non-arrears cases, such as for damage, illegal acts etc, would continue to receive hearings, although the local registrar's role would be significantly altered, which leads me to my final main point.

(3) The new roles for local registrars and court officials: Whether you wish to utilize the Ministry of Housing representatives in this endeavour or whether you wish to utilize your existing court staff, who are extremely knowledgeable in landlord and tenant matters and who understand that for all of the parties time is of the essence, a new role for local registrars must be implemented.

The new system I propose would emphasize the private relationship and agreements between landlords and tenants. Local registrar's hearings as we know them would be abolished and the matter should proceed immediately before a judge. Local registrars would be trained in mediation and dispute resolution techniques, and local registrars and other members of the bureaucracy would work in conjunction with judges to pre-try cases and, where agreed by the parties, mediate complex and lengthy disputes and save the valuable public resource of court access.

In the Toronto region, where the bulk of the province's applications are presently heard, a pilot project has already been implemented which to my knowledge has been extremely successful and in my cases has been invaluable to settlement. This pilot project so far has saved at least two trial days for me, and of course for the courts, the tenant and the tenant's representatives.

Just as an aside, I was speaking with one of the judges who is on this committee yesterday. Unfortunately, due to a shortage of local registrars in your Toronto office, that has been suspended until September, which again is a different issue altogether.

Rumours have already surfaced that the dispute resolution system is being transferred to a Ministry of Housing tribunal. If that is the case, it is unfortunate and will lead to a decline and not a rise in the confidence of landlords who will invest in this province. If the time lines previously used by the Ministry of Housing are any indication of how disputes will be adjudicated and resolved in the future, then it will not bode well for the future.

On page 3 of my response, which I hope you all have, I have set out a number of other reforms that I propose as being beneficial to both tenants and landlords. I could probably go on between now and 8 o'clock tonight with other reforms, but I'm not going to do so in this context.

Cost: A figure of \$300 for the province has been cited as the average cost for each eviction in Ontario. With my proposals, the province's cost could ultimately be reduced to \$75 an eviction. If you consider your recoveries of \$45 per file to issue an application for eviction and \$48 to issue each writ of possession, the expectation is that the cost to the province could be brought down to zero while keeping your user fees the same and maintaining your access to impartial decision-makers.

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My last point deals with confidence. Investment in real estate is long-term. Unlike liquid assets, which can be moved quickly, investment in, and construction of, residential rental real estate requires long-term confidence in the economy, legal structures and the stability of the policies of the provincial government. Change, regulations, taxes and the inability to earn a return on investment mean that private sector construction will not commence.

The private sector, even in housing, notwithstanding some prior speakers, prior to the implementation of rent controls in 1975 had shown that it was able to provide for the needs of people seeking accommodation. When private housing is viewed as a public resource, long-term investment in construction stops. When rent controls are used to subsidize existing tenants, regardless of need,

when taxes are imposed at rates higher than other investments, when regulations are arbitrarily and retroactively passed, confidence is gone and the public is then required to step in at tremendous expense.

In conclusion, the proposals I have suggested strike a balance between the rights of landlords and tenants. It is the middle ground between the law as it existed prior to 1975 and the law as it exists today. It will increase confidence because it will leave protections in place that have existed in this province for 130 years and will confirm the province's commitment to legal stability in relation to landlord and tenant disputes.

I thank you for your time in considering my presentation and look forward to any questions you may have.

Mr Tilson: Thank you, sir. There have been several people who have come forward to talk about the process of landlord and tenant issues, disputes, and there has been some criticism that the process now currently takes too long for either a tenant's rights or a landlord's rights. You started commenting on a general dispute resolution system and you went as far as to say it's unfortunate, but you didn't continue with that. I'd like to hear more about that. You appear to be supporting the first part of what is suggested, which is the mediation, although it sounds like you'd prefer that registrars do that, as opposed to a system of mediators. Finally, I'd like you to comment, because I don't think you referred to the appeal process, as to whether there should be an appeal process, and if so, on what.

Mr Zarnett: I'll quickly answer your questions. First, what has to be done is to shorten the notice periods. The reason that it takes so long is because you have lengthy notice periods. A tenant knows if they've not paid rent. The fact that they have 10 days or 20 days in a sense is immaterial. They're going to have to come up with the rent in 10 days or 20 days. If you shorten the notice periods, that will be one cure. Eliminate duplication. If you eliminate the duplication between a registrar's hearing and then going to a judge, that of course will save time and the matters will be dealt with more efficiently. If you take a look at those two things, there's no reason why a dispute can't be heard and decided within the first month the tenant goes into arrears.

With respect to appeal, I don't see that there should be any change in the appeal procedure to the Divisional Court at the present time. They should be, in a sense, appealed on very important grounds. I know that the Divisional Court, because I deal with those cases myself, will take a good, hard look at an appeal when a motion to quash is brought by the landlord or the tenant. If there are frivolous grounds, those can be weeded out very quickly as well. The system is not complicated as it presently exists and it provides for significant protection for both landlords and tenants.

Mr Grandmaitre: We were told yesterday that more than 3,500 eviction notices were issued in Metro last year. In your presentation today, you say that 80% to 90% of your cases are related to arrears in rent. Do you think that with this new legislation your percentage will increase or decrease? Do you think that people will be able to afford higher rents? Because when you remove

rent control, I'm sure that some landlords, if not all landlords, will take advantage of their low rents.

Mr Zarnett: If I may, then, respond to you, firstly, it's probably 35,000 and not 3,500 applications in Toronto.

Mr Grandmaître: Thirty-five hundred.

Mr Zarnett: There's no question it's 35,000. They go through 10,000 every three months, so there are 35,000 I would say to you.

Mr Grandmaître: Not 35,000, I'm sorry; 3,500 they said.

Mr Zarnett: That might be evictions, not applications. I know there's 50,000 across the province of Ontario in any year. The answer is I don't think that my proposals will — there will be no rise in evictions whatsoever to the proposals that I am making in relation to the government's presentation, for the simple reason that rents —

Mr Grandmaître: No, no, I'm saying with the present legislation that's before us.

Mr Zarnett: Do you mean vacancy decontrol?

Mr Grandmaître: Yes.

Mr Zarnett: Vacancy decontrol will only affect people who leave their units. So if people stay in their units, there will be no increase in evictions.

Mr Grandmaître: But 20% of the people move every year.

Mr Zarnett: I'm not sure where those 20% of people go, but the market, of course —

Mr Grandmaître: Ask the government.

Mr Zarnett: In my view, I don't see that there will be an increase in eviction.

Mr Tony Silipo (Dovercourt): Mr Zarnett, thank you very much for your presentation. As someone who's had a little bit of experience in landlord and tenant court, certainly nowhere near your level of experience, I certainly agree with the thrust of your presentation, which is that if we're interested, as the government says it is, in making the system simpler and more straightforward, which I think would be beneficial for both landlords and tenants, there are ways that you are suggesting to do that within the existing system. If I hear you correctly, there are many benefits to be gained from keeping the existing system, rather than scrapping it and moving to either an administrative or a quasi-judicial body.

My sense is that the government perhaps has underestimated the costs that would be involved in that, unless what it's looking at is something that would provide far, far less equality of service than we get now through the court system. I guess I just wanted to sort of make that point. If you have any further comments, please make them. But just to sort of emphasize what I hear you saying, which is in fact that there are ways in which the present system can be streamlined and still maintain the basic protection that's there by having a judge at the end of the day be the one that would be making decisions in those cases where it warrants that kind of an impartial look at resolving a dispute between a landlord and a tenant.

Mr Zarnett: Let me respond again. I didn't expect myself to come here agreeing with you, Mr Silipo, but I do agree with you. I agree with you, firstly, that in the present system about 70% to 80% of the cases are presently settled. That's the way it works. You go down

to court, down to 361 University, or in any of the courthouses across this province, because it's not just Toronto that I appear in, and a significant majority of the cases are going to be settled. So the system already works.

The cost of setting up a new tribunal, both to the province and to the parties, is going to be tremendous. I don't want the government to underestimate the costs that are going to be incurred by the government in setting this up and providing for individual adjudicators — the figures that I've heard are \$100 to \$150 per case — when a simple change like this, which many tenants' groups may not agree with me on, can reduce your costs by three quarters.

I don't believe that taking it out of a judge's hands, when landlords and tenants have had the ability to take their disputes to a judge, is going to reduce the costs. If it goes to a tribunal, the costs will not be reduced. So I would agree with you that if it's left in the courts but we streamline the process and make some amendments that make a little bit of sense here, we can strike a balance. We can maintain some resort to impartial decision-makers, as opposed to politically appointed decision-makers, whether they're appointed for a three-year or a five-year term.

The Chair: Thank you, Mr Zarnett. We appreciate your interest in our process and your input today.

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NEIGHBOURHOOD LEGAL SERVICES

The Chair: Is Julia McNally here? Julia represents the Neighbourhood Legal Services. Good afternoon. We appreciate your attending with us this afternoon.

Ms Julia McNally: Good afternoon. It's my pleasure to be here. I am here today to speak against the proposals set out in New Directions and argue for the continuance of the existing system. I come today to speak both as a lawyer who specializes in landlord and tenant issues and as a member of an organization working in and for a community of tenants, many of whom have low and moderate incomes.

Neighbourhood Legal Services is a community legal aid clinic. We're located in the east side of downtown Toronto. We represent the area east of Yonge Street to the river, south of Bloor to the lake. This is a multi-ethnic community with people who are recently arrived from all parts of the world, with second, third and fourth generation immigrants, and with aboriginal people. The community is rich in cultural diversity but, frankly, many of its members are very low in income. The vast majority of the people in the community live in rental housing, whether it be public, private or social housing. These people are vulnerable to economic changes and to political changes.

They have already in the past decade suffered tremendous pain. They have been hit hard by the recession, they have been hit hard by the loss of industrial jobs and they've been hit hard by the policies of this government, especially the cut to welfare. We've seen approximately \$1 million a month leave our neighbourhood to go up to Rosedale.

We worry that with New Directions the tenants in this community will suffer even more, and I'm talking here about real suffering. I'm not talking about not being able to buy a new set of golf clubs. I'm talking about not being able to put nutritious food on your table, about not being able to get adequate housing, about four or five adult men sharing a crowded room in a rooming-house and paying \$400 to \$500 for the pleasure each a month. I'm talking about retired couples, families, living in dank, dirty basements infested with roaches. We're talking real suffering. It's our prediction that if New Directions goes through, this suffering will occur in our communities — not just in downtown Toronto but across the province.

What I propose to do in my deputation is focus on the question of dispute resolution system, pose two questions to the government, and then try to leave time to respond to any of your questions.

Before I get into my comments on the tribunal, I wish to say that Neighbourhood Legal Services endorses the statements of tenants and tenant groups that have already been made opposing New Directions. In particular we endorse the submissions made by Metro Tenants Legal Services, the Tenant Advocacy Group, the Federation of Metro Tenants' Associations and the United Tenants of Ontario. We urge that you listen to the voice of 3.3 million tenants in this province and listen to them when they say this is not a tenant protection package, this is a landlord windfall package.

Now I'd like to turn to some comments on the proposed tribunal. I've provided you with a copy of a submission sent to the Ministry of Housing and prepared by the Tenant Advocacy Group. It's quite a detailed submission and we make some preliminary comments but then focus on our suggested structure for a new tribunal if it should be created. I'm not going to touch on all the points but I urge you to read the document. As well, in the TAG submission to this body there is a lengthy section on tribunals. I endorse both those documents and urge you to read them.

I don't often agree with Mr Zarnett, but we do agree on the issue that the court must stay. The court system has provided relatively good service to both landlords and tenants. It's not perfect, by any means. Mr Zarnett has offered some suggestions for change. Neighbourhood Legal Services doesn't agree with those suggestions for change and has many of its own, which I'm not going to present to you today because I don't think the issue is on the table. However, if the issue does get on to the table, the question of reforming the court system, we would urge that a committee representing landlord and tenant interests and all parties be set up to investigate ways of improving the court system.

It's our submission that the government's reasons for creating a new tribunal are ill-founded and that a new tribunal is not necessary. The government, in New Directions, states that the current system is too complex, too confusing and too inefficient. It's our submission that by and large the system is not too complex, nor too confusing. Most parties navigate through the system and there are resources currently available to help parties. There is duty counsel at the court, there are clerks at the court, there are clinics, there are lawyers and there's a

clinic for landlords. They are not perfect. We could use more. But there are certainly systems there and landlords and tenants work their way through the system.

There are certainly some simple steps that could be taken to improve the system. Among them, duty counsel at the court could be increased — that's a lawyer who's available to answer tenants' questions — and simplified forms could be adopted at almost no cost, in particular simplified forms that included causes of action that tenants might be interested in.

On the question of inefficiencies, some exist, but frankly, the Ontario Court (General Division) offers very, very fast dispute resolution. Most issues get resolved within two to three months from the day the first notice is served to the day judgement is issued. Two to three months is faster than any court currently operating in Ontario. If you go to Small Claims Court, which is supposed to be the accessible, quick court, it takes you six months to a year to get in the door and then, if you're lucky, you'll have a trial, but maybe it's too crowded and it will be adjourned. If you go to Ontario Court (General Division) civil side, it takes years to get through a matter. This court is quick. It's also quicker than most tribunals. Many tribunals take six months to a year to get to a hearing and then to get a decision. Yes, perhaps landlords would like to get their tenants out quicker. Maybe they want to lock the doors again and kick them out as we did in the bad old days, but this is a civilized society and tenants have certain rights. Two to three months is pretty darn quick. You're not going to get it faster anywhere else.

Finally, to the extent that there are inefficiencies, and I have seen some, they're not a problem of the forum, they're a problem of underfunding. They're a problem of not enough judges sitting and not enough clerks available. If you want the system to work properly, it has to be funded properly.

It's our position that Landlord and Tenant Act disputes should stay in court. They are contractual issues that require serious, thoughtful adjudication by neutral adjudicators, and judges are in a good position to do that. It must stay in court with all the current rights. That includes a right to a trial. I disagree fundamentally with Mr Zarnett's suggestion that certain matters should not go to trial. All matters, including arrears, should go to trial and tenants should have the opportunity to argue their case and argue for relief against forfeiture if that is necessary.

It's our position that a new forum will lead to an administrative nightmare. In particular if the government is seeking to cut costs and does not properly fund this tribunal, you're going to have excessive delay. Everybody is going to be frustrated. It's not going to work. However, if this government and this committee decides that a new tribunal is necessary, then in our document that I submitted we have a number of suggestions for the way it should look and I'm just going to highlight some of those now.

First and foremost, in any new tribunal the substantive rights of tenants must be maintained, and those include:

Maintaining the current notice procedures. I should note that New Directions suggests that; New Directions

suggests keeping the current notice procedures, there's no suggestion that they should be cut. They're not particularly long now and any cut in them will reduce tenants' security of tenure;

Second, the right to request what's called relief from forfeiture must be maintained. That's the right to go before a judge if you're in arrears and to explain to the judge why you are in arrears and ask to be allowed to stay in your apartment and to pay the money back on a repayment basis. That right must continue in any new tribunal along with the right to a trial, and that's the final point: There must be a right to a hearing on all applications.

Those are the substantive rights that must remain. In terms of tribunal members, tribunal members must be appointed by way of advertised competition and chosen on the basis of merit and skill. They cannot be chosen on the basis of political connection. Further, tribunal members must be representative of the broader community. That means representative both of the multi-ethnic community but also of tenants and landlords.

Next, tribunal members must have knowledge of legal principles, including administrative law, contract law and landlord and tenant law. This is not some fluffy area. Landlord and tenant law is law. It's contract law, it's tort law, it's administrative law and it's interpretation of legislation. This is serious law. The amount of money may not be huge, but at stake are the vital interests of tenants in their homes. So this has to be taken seriously.

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Next, tribunal members must be sensitive to and aware of the reality of landlord and tenant disputes. In particular, they must be aware of the disparity in power between landlords and tenants, because there is in fact a disparity in power. I know that people have come before you today and another day saying there is no such disparity of power, but it does exist and in fact it was recognized by the Tory government in the 1960s when it introduced the landlord and tenant legislation originally. There is a disparity and that has to be recognized.

Finally, there must be a balance between formality and informality in any new tribunal. By that I mean that the tribunal must be formal in the sense that it is independent of government and bound by basic rules of procedure, in particular the Statutory Powers Procedure Act. This can't be loosey-goosey. We have to run proper hearings where people have a chance to make arguments and introduce evidence. However, it must also be informal in the sense that it's accessible to both tenants and landlords, accessible to those who don't speak English as a first language and conducted in relatively plain English rather than legalese.

This tribunal, if it gets set up, as I said, must be serious. Tenants' vital interests in their homes are at stake. If they lose their homes, they lose their security. This raises serious matters requiring serious adjudication.

Another issue that has been raised is the question of mediation. We are somewhat wary of mediation but support it going ahead on certain very specific terms. Mediation must be voluntary. The mediators must be trained mediators, sensitive to the power imbalance between tenants and landlords and to the issues. NLS

would not support the use of local registrars as mediators. We believe that anybody who acts as a mediator must have gone to a proper mediation course, must have skills in the area. This isn't something you can just pick up and go in and do. This is a skill that gets trained. Certainly the government's ADR pilot project doesn't just take people off the street. The people who are working as mediators there, resolving disputes between corporations, are serious mediators with real training. Those same type of mediators are needed in this arena. There should be no corner-cutting on this area.

Finally, it must be acknowledged that mediation is not necessarily faster than a trial. In proper mediation you sit down with both parties, work through all the issues. This should not be seen as a way to speed up the process and circumvent justice.

Those are all the comments I'm going to make now on the tribunal. I refer you to our submission, which goes through much more detailed issues quite extensively. However, I would like to end this section by saying if this committee decides to look at the reform of court, what it should do is recommend setting up a multiparty commission or committee to develop proposals. This is not the forum to reform the court system — it's not on the table — and this is not the proper process for doing it.

I would like to end by asking two questions of the government and requesting an answer, and then I'll be prepared to answer any questions you might have. The first question I have relates to the issue of construction and supply. This government has raised the very serious problem that there has not been enough construction or supply of rental housing in Ontario. I wonder then and wish to know why this government cancelled the apartment and houses legislation which provided an excellent source of rental supply in the private market at very little cost, why that was jettisoned and why instead the government is pursuing this high-risk, abandon-rent-control approach to construction which has proved unsuccessful in British Columbia. That's my first question.

My second question deals with maintenance. In New Directions the government says that it wishes to induce landlords to repair by providing them with rent increases. However, landlords already have a statutory obligation to repair that's set out in section 94 of the Landlord and Tenant Act. Landlords already get a 2% rent increase each year to allow them to do repairs. Why, I wonder, is this government asking tenants to pay more to have landlords do something that they are already obligated to do? It strikes me that this is like asking a mother of young children to pay her ex-husband money to get him to fulfil his obligations under the law to pay her support. It's absurd. It makes no sense. Landlords have an obligation to repair. Tenants should not have to be paying them extra money to get it. So why is this government asking tenants to do so?

Those are my comments and questions. I hope I get an answer to my questions and I'm happy to answer any of yours.

The Chair: Thank you very much. The parliamentary assistant to the minister is not with us today but we do have a representative from the ministry.

Mr Sergio: This is more of a political question.

The Chair: The questions you've posed are more of a political nature than of a ministry nature. In the absence of the parliamentary assistant, I don't know that anybody on the government side, none of whom are experts on the issue, is prepared to answer those questions.

Mr Sergio: Maybe the Chair would like to answer those questions. You've got the answers, I guess.

Mr Smith: Mr Chair, we appreciate the questions being posed and we'll certainly note them. I think the committee and certainly the government members would like to take the remaining amount of time to direct some questions specific to the proposal to the presenter, if that's possible, please.

The Chair: I didn't quite understand. Are you saying that you will get back to her with the answers?

Mr Smith: Certainly. I think that's certainly the position I'll take.

The Chair: That's the best we can do today. We have about a minute per caucus left for questions of you. We'll see how that goes, beginning with the Liberals.

Mr Sergio: You have a very good question, but the answer is very simple: They just want to get out of the housing business. I believe it's one area that the government should get back into and not abandon the tenants, who really need protection and need affordable housing. No one else than the government knows how many people are on the waiting list, and to abandon those thousands of people to the free market, I think it's just a terrible copping out by the government, really. Why did they eliminate all the funding instead of perhaps making some changes to the program and continuing to provide some much-needed affordable rental accommodation?

Julia McNally, you have touched on a large scale on most of the aspects with respect to the relationship and problems between landlords and tenants —

The Chair: Thank you very much, Mr Sergio.

Mr Sergio: I haven't placed my question yet.

Interjection.

Mr Sergio: You wasted three minutes trying to get a question which you couldn't provide — Mr Chairman, with all due respect, you are the Chair, you've got six, seven members and you wasted three minutes of the committee's time, and I can't even place one question?

The Chair: We basically have an agreement on time, Mr Sergio, that we've stayed with.

Mr Sergio: I think you should take into consideration, Mr Chairman, that you wasted five minutes trying to answer questions from the deputant here, and I can't even place a question? I find that very offensive, Mr Chairman.

The Chair: Mr Silipo.

Mr Silipo: Ms McNally, time doesn't allow us to get into things in much detail. I just wanted to make a brief comment and if there's any time, if you have any response, I'd appreciate it.

I agree very much with you. You've heard my response to the previous deputants around the process and the sense that I think changes could be made to the present system. When I look at what you and what TAG has suggested, I don't hold out a lot of hope that if there were to be a tribunal we'd get anywhere near those kinds

of protections, because it would be seen by the government to be probably more expensive than the present system and perhaps in their view even more cumbersome, as they would see it.

But I do think very much that your suggestion that if we're serious about coming up with a better process, let's put together a group of people to focus specifically on that. I think that would be a good way to go and I hope that members on the government side are listening to your suggestion and that of others. What you're saying is, there are ways in which we can make the present system better, but what's come before us so far isn't it.

Ms McNally: No, that's correct.

Mrs Lillian Ross (Hamilton West): Because our time is limited, the same as the opposition members, I'll be very quick here. You made at the very beginning of your presentation some comments that some families have experienced situations where they had cockroach-infested residences and we had presentations yesterday, some very awful stories about what experiences some tenants had. I guess my question to you is, given the nature of some of the stories you've heard and the people you've represented on their behalf for their protection, are you telling me that the status quo is all right, to leave things alone? Don't you feel there should be some changes made so that we can make things better for tenants?

Ms McNally: Absolutely. We need changes to ensure that maintenance is done. Neighbourhood Legal's position is that paying extra rent is not going to do that. Right now we have mechanisms. People go to court; they get orders. Some landlords fulfil them; some don't. We need better mechanisms for enforcing those orders and we need the city to have more power to go in, investigate and repair.

The Chair: Thank you, Ms McNally. We appreciate your being here today. Unfortunately, 20 minutes does not give us a lot of time but it is the agreement among all the parties that we restrict the presentations to 20 minutes. We appreciate your attendance.

Is Peter Bruer from the Conflict Resolution Service here? We'll have a 20-minute recess.

The committee recessed from 1541 to 1559.

CONFLICT RESOLUTION SERVICE

The Chair: Our next presenter has arrived, Peter Bruer from Conflict Resolution Service. Good afternoon, sir. Welcome to our committee.

Mr Peter Bruer: Good afternoon and thank you for the opportunity to speak to you about the very important changes being considered by this committee. My name is Peter Bruer. I'm on staff at the Conflict Resolution Service at St Stephen's Community House here in Toronto. I'll address my remarks today to only one part of the New Directions white paper, that dealing with the mechanisms for dispute resolution and the possibility of a role there for mediation. Mediation is a small part of the New Directions discussion paper, but I believe it has the potential to be a big part of the future.

Our Conflict Resolution Service has been practising community dispute resolution for over 10 years. We draw on the expertise of 75 volunteer mediators in the com-

munity — representatives of many of the cultures, backgrounds and neighbourhoods we serve. We are backed up by decades of experience in community mediation elsewhere in Canada and the United States. We share mediation services presently with services in North York, Scarborough, Windsor, Ottawa-Carleton, Kitchener-Waterloo and Simcoe county, among others. The field is developing rapidly, especially where there is money available for coordination of services.

The community mediation model that we use embodies several important principles. We seek to rebuild the relationship between parties to a dispute, not just to resolve a particular problem. Parties must come to mediation voluntarily and they must enter into agreements voluntarily. Responsibility for finding the solutions to the problem lies with the disputants, not with the mediators, adjudicators, judges or other people. This necessitates that the people who come to mediation be in a position to bind themselves to an agreement and that they be well enough informed to know what they're agreeing to.

We start by facilitating communications between the people involved, helping them understand each other's position, even if they don't agree. We encourage people to talk about their needs, about how a dispute affects them, rather than about their legal rights so much. Our experience demonstrates that people who understand each other are likely to find the grounds for an agreement. Then they go on to generate possible solutions to the problem, to weigh those solutions and, if they can, to make a written agreement. The agreements made in mediation work because of the process involved. The parties find the solutions themselves and they accept them voluntarily. The agreements work.

We are currently engaged in a pilot project that is directly relevant to the issues that you're dealing with at these hearings. Conflict Resolution Service has set up a landlord-tenant mediation project, which I coordinate — it's been funded by the United Way of Greater Toronto — to determine whether community mediation can resolve disputes where eviction for non-payment of rent is the issue, certainly one of the more difficult and one of the more common issues, and whether it can do so faster, more efficiently and more humanely than the courts can.

I'm sure you know and have heard from countless other people in these hearings about the difficulties, the delays that exist in resolving landlord and tenant disputes in the current system. The costs can be calculated in dollars terms: costs to the courts, to the sheriff's office, to the legal aid plan, to landlords for cleanup and re-renting and carrying vacancies and so on. There are also tremendous social costs involved to the people, the families, the children, who are dislocated, housed in hostels, who have a harder and harder time to find housing. In the long run, and perhaps most importantly, there is a cost to the whole community where, again and again, problems are resolved in a way that pits us against each other rather than finding solutions between ourselves.

We're asking you today to think seriously about creating a significant role for community mediation in the system that you ultimately recommend to the Legislature. There are many good reasons why you should do this.

First of all, diversity makes any system stronger. Mediation doesn't work in all cases, but neither do the courts or tribunals. Often parties to a dispute will leave a dispute unresolved or even accept defeat rather than go to court, rather than face that conflictive situation. With limited options we get limited successes. Community mediation offers an alternative.

Second, mediation can be very cost-effective. Common sense will tell you that a dispute resolved essentially by the people involved, with the help of a volunteer-based, non-profit community organization, perhaps resulting in an agreement that makes no demand on the courts, sheriff, hostel systems, housing help services, is cost-effective. A long-standing tenant-landlord mediation service in the state of Connecticut, for example, has demonstrated savings in emergency shelter costs alone to the state of \$2.75 million a year. This is a state that may have a population similar to that of greater Toronto. The cost savings in legal fees were also significant.

Third, mediation encourages communities to acquire the skills and experience to regulate themselves. There is no reason why the landlord-tenant community can't take more responsibility for its own problems.

Communities can learn to deal with much of the conflict natural to everyday relations. We can't avoid conflict; conflict is a part of life. The landlord and tenant community already demonstrates an impressive potential to do this. The vast majority of rental disputes never see the light of day. They're resolved by a discussion between the tenant and the superintendent or the manager, or whatever. For example, one large management company routinely accessing the mediation option could set an example that could affect the whole community, and several of Metro's larger landlords are already interested in what we're doing here.

Fourth, many of the communities that comprise the province of Ontario are deeply rooted in dispute resolution traditions based on mediation. I spoke recently with somebody very active in the East African community in Toronto who said, on hearing what our mediation service does, "That sounds exactly what we've been doing traditionally in our community in East Africa for centuries." This is a tradition that belongs to those people and they belong to this country.

I hope these brief comments will lead you to take community mediation into serious consideration as a component of the dispute resolution mechanism that you end up with. It has a great deal to offer. I want to close with some specific recommendations in that direction:

(1) That you continue pilot mediation projects and experiments that various ministries are currently or have recently engaged in, but broaden their scope to include community-based mediation services like ours, not just professional services or services directly working out of the courthouse and so on.

(2) That you include the St Stephen's conflict resolution service and other community mediation services like ours, and I mentioned earlier that there are several already, in discussions about community mediation's potential contribution to landlord-tenant resolutions.

(3) That you set up a dispute resolution system in the legislation that the House eventually passes that allows

for mediation and for the principles of community mediation to function alongside or within it.

Thank you for your time and attention. I'm happy to answer any questions that you have this afternoon.

Mr Marchese: Mr Bruer, what kind of training does the group get and from whom?

Mr Bruer: Our mediators are trained internally by ourselves; we have trainers on staff. They get at least a three-day, full-time training session. They also get additional training in landlord and tenant relations, law and so on, and they get the training that comes from mentoring and partnering. We don't mediate cases singly. Cases are mediated in groups of two and three, and often four and five mediators are involved. A lot of the training takes place on the job, so to speak. A lot of our mediators have a lot of other formal training. They're lawyers, professional people, building managers, social work students or whatever. They bring other training into the profession as well.

Mr Marchese: What is the difference between the service you provide, which is community-based, and the professional services you were alluding to?

Mr Bruer: There may not be significant differences in a lot of cases. Our model is a bit different from the model that other services function under. There's a spectrum of things called mediation; some of them become arbitration or negotiation, deal-making. Pure mediation involves a model where the mediators are simply there to foster communication and understanding and don't intervene in the problem-solving in the case.

I think the most significant difference, though, is that we have a large pool of mediators that come from the communities. This is a volunteer thing for them. They are coming as representatives of the community, as peers of the people who are in dispute, who understand the people because they've stood with them in the same place in their lives, because they speak the same language — and we speak 27 different languages at Conflict Resolution Service — because they come from the same background, they're the same age and so on. I think there is where maybe the difference is made: We pay a lot of attention to that.

Mr Marchese: So you mediate as well in different languages?

Mr Bruer: We do. Sometimes it can be very complicated, but that's what it takes.

Mr Marchese: That's great. What is the rate of success?

Mr Bruer: Four out of five times a case goes to mediation, Conflict Resolution Service can help the parties make an agreement. The vast number of agreements are kept for the reasons I cited earlier. We follow up with the parties and for the most part agreements are kept. Our success rate is about four out of five. Not all of the cases that we get involved in end up in mediation. Sometimes the parties find a different way to resolve it, sometimes they decide that mediation isn't for them.

Mr Marchese: Do the legal clinics use your services?

Mr Bruer: They do. We get referrals from legal clinics, politicians' offices, children's aid society workers and welfare case workers, co-operatives, unions — all sorts of different places. The landlord-tenant project is

going to find referrals from organizations, obviously, that have a lot to do with landlord and tenant matters. Legal clinics have been one source.

Mr Maves: How is mediation generally initiated?

Mr Bruer: By one party or the other to the dispute finding out about us. Maybe that's through one of the sources we talked about earlier; maybe they simply know we exist or they look us up. They contact us and say, "I have a problem with my landlord," or "My tenant, they're not paying the rent," or "I'm not able to pay the rent and they're going to evict me." We talk to that first party, make them aware of what mediation is, how it differs from other means of resolving disputes and get their consent to proceed. If they think this is a good idea, they're willing to try, we then contact the second party and say: "This person would like to mediate the problem that they have with you. Are you willing?" That's where mediation can stop, obviously, but it can also proceed.

1610

Mr Maves: I'd imagine initially when you contact maybe a landlord for the first time, they'd be fairly sceptical about who you are and why you're calling and so on?

Mr Bruer: I haven't found that yet. We've spoken to both landlords and tenants initially and in the second case, and found that the response is good. This is what makes me say I think there's a lot of potential in this community. There's a lot of realism, there's a lot of goodwill, if it can be found, maybe not everywhere and always the problems rise to the surface. But I haven't discovered that yet. I'm sure we will.

Mr Smith: As you're probably aware, the previous presenter addressed this issue as well. In her presentation, she focused on the issue of voluntary mediation and I was interested to get your perspective on whether or not there's a role for mandatory mediation versus voluntary and what, if any, implications there might be between the two.

Mr Bruer: I guess all I can say about that is that our service and the model that we've been practising for 10 years is exclusively voluntary and it really doesn't work if it isn't voluntary. If the parties are compelled to come to mediation, then they're not coming with a willingness to make an agreement that they are going to be comfortable with; they're coming to be told how to solve the problem or to be asked something like discovery in court perhaps. Our model requires that they be willing to be there on their own terms, that they can only voluntarily agree, they can't be forced to and so on.

But as I said, "mediation" is word that is used to capture a whole spectrum of alternative dispute resolution strategies and models and so on, so it's not inappropriate to say it can be involuntary.

Mr Wettlaufer: Mr Bruer, many of the evictions, many of the court cases relating to evictions, take two to three months to settle and quite often we have landlords who will wait up to 60 days to even present it to court, and then, of course, if there are adjournments, it's going to go on that much longer, and then the judge will allow 20 days for payment into court. So we could have a small landlord who needs that money to pay for his mortgage or pay his taxes. We could see that he could be anywhere

from four to six months without receiving rent. Do you see a role for mediation to speed up this process?

Mr Bruer: Mediation isn't going to speed up that process, because obviously the two are disconnected. Mediation can resolve a dispute more quickly than that. We've been engaged recently in a couple of very fast mediations where landlord and tenant have been brought together in the course of a week or a week and a half. In one case, an agreement was reached, a resolution was found; in the other case, it wasn't. Certainly, it's possible, and we understand that we have to provide a system that is going to be not another hoop to jump through, not another piece of red tape to cut, but something that may cut the red tape in some ways without endangering the rights of either party, without putting anybody in a vulnerable position because the process is getting ahead of them.

We also are very careful to make sure that the parties are comfortable with the speed at which things are operating. They don't have to be there. They have to get their information ahead of time and know exactly what they're doing. But yes, it can happen more quickly because it's largely in the hands of the parties. They don't have to wait for the judge to do something. If they want to mediate two weeks later, they can set that date themselves and we're available.

Mr Curling: Thank you, Mr Bruer, for your presentation. I have no doubt at all that you do an excellent job and quite professional. I presume that if there was no conflict, you would have no resolution to it, meaning that if all things were running evenly, maybe we wouldn't have to set up an anti-harassment committee and what have you, but we have a lot.

Do you feel, then, that one of the main strategies of the government, especially in this situation, is to make sure that most of the things that are causing the problem be resolved much earlier? In other words, tenants come in here regularly and talk about — a lady was in here yesterday and she walked us through a week of some really terrible times that she had —

Mr Marchese: Miss Suzette.

Mr Curling: Yes, Miss Suzette from Isabella. The fact is that if many of those things are resolved or being done, we wouldn't have this kind of board or people spending more time trying to resolve if the elevator works, if the laundry room door key fits and all of that. Do you think that's where the concentration should be really at: to have these things resolved long before it reaches you?

Mr Bruer: I don't think anybody would deny that if there aren't causes for conflict, we don't have conflict, then we're all better off. But it will be a part of relationships. You know, the best-made plans will go askew and people are human beings. We need to be able to deal with conflict when it comes up. Often things are not in the control of the parties.

Certainly, I think it's true that the earlier you can find the source of a conflict, the earlier parties to a conflict will try to resolve it, the better, before it becomes a crisis, before the options fall away, before the deadlines come. We make every effort in the work we do to get in on the ground floor of these things. But I think what you're saying is self-evident, in a sense. If things don't

cause conflict, we don't have conflict and we can all go home. I'll be out of a job; that would be a bit of problem, but I can live with it.

Mr Curling: That's my point. But the fact is, though, that I think tenants have been telling us for years and years that the concern is that they're purchasing a certain product and it's not being delivered. Landlords are also saying that some of the purchasers that they have, in all fairness to them, have been more or less brutal to some of their property. There is a law that deals with that. But it outweighs that many of the things that are happening today are the fact of gross neglect.

The problem I have, though, with all this is that the people at that end don't have any more patience for all of this type of thing. Human rights, for instance, a long line-up and people don't get it resolved. So the poor and those who are working, it costs them much more to come to resolve their problems, which can be avoided, and government has been more or less abdicating its responsibility in carrying out some of the enforcement itself. Do you feel there is a lack of enforcement that is causing this too?

Mr Bruer: What community mediation attempts to do is to address the problem from the point of view of what the needs of the parties are. We have a dispute, we have a problem over non-payment of rent or whatever complicating factors. You can look at it as a question of rights: What does the law say and who's in the right and who's in the wrong and decide the question. Somebody wins and somebody loses. Or you can look at it as a question of needs: What does this person need, and why? How do they feel about the problem? How does it affect them? What does this person need? How does it affect them? Is there any way in which both persons' needs can be met? Are there any common grounds? Are there things that can be exchanged?

That's the mediation model that we follow and that's what works four times out of five when the parties are willing. It isn't going to work four times out of five when the parties aren't. It isn't going to work five times out of five.

So I think mediation can solve problems in a different way and it can address those kinds of problems from a different perspective. It doesn't really speak, then, to the analysis that you're putting forward, maybe. It comes from a different perspective.

The Chair: Thank you, Mr Bruer. We appreciate your interest in our process and your attendance here today.

TONI PANZUTO

The Chair: Our next presenter is Ms from the Federation of Metro Tenants' Associations. Good afternoon and welcome to our committee.

Ms Toni Panzuto: Good afternoon, everyone. For the past few days I have listened to the people who have appeared in front of this committee to express their views on the government's discussion paper. Since I have been a tenant all my adult life, I was most concerned with what the tenants had to say. I have listened to their opinions about the proposed changes to the six pieces of tenant legislation and how they thought the future and the quality of life of Ontario's tenants would be affected.

I commend and applaud the presentations put forth by tenant organizations and individual tenants. I agree with their primary points that if this committee endorses the proposed changes as they stand, it would be detrimental to tenants and extremely beneficial to landlords. However, I disagree with many of them on one fundamental point: I cannot agree that tenants should accept the status quo or that the legislation should remain as is. I fully concur with presenters saying to government, "If it isn't broken, don't fix it," or for that matter, "If there isn't a crisis, do not invent one," but I feel that even though the present legislation isn't broken, many improvements could be made to it to strengthen tenants' rights.

1620

To illustrate my point, let me give you an account of what the tenant protection legislation, as it stands, has done for me recently. In November 1995, the building I had resided at for two and a half years changed ownership once again. The new owner, Ibrans Investment Ltd, made good on his promise to substantially raise the rents and evict anyone who could not afford the increase. The rent control system was a great help to him in this plan. Because the system had been so generous to the previous owners, the entire building was paying rent at a so-called rent discount, since no one would pay the sky-high maximum rents. Rather than have the building half vacant, previous owners had lowered the rents to a market value rate, in response to the economic realities of the last few years.

Lucky for me, my yearly rent increase notice came due about the same time that the new landlord came aboard. Consequently, in November last year, I was notified of a 9% increase, as opposed to 2.8%. As of March 1, 1996, my rent was to increase by \$65, or to a monthly amount of \$790. But this was not the only bad news for me. Just a few months earlier, the government of Ontario had seen fit to slash my monthly income by \$264, or 21.6%, pending approval of my long-term disability benefits. Unable to meet the increase, I wrote to the landlord requesting that he delay implementing the increase and accept the existing rent of \$725.

For this effort, I was served with form 4, a notice of early termination. Additionally, the landlord repeatedly sent the superintendent to my door with the message, "Pay the increase or pack your bags and get out." Of course, the landlord was still accepting and cashing a monthly cheque of \$725. On April 13, 1996, I came home to find a notice of a court application for an eviction order taped to my apartment door. Although the landlord was collecting \$40,000 each month from the building, he wanted to evict me and my son for the sake of \$130 in arrears. On April 25, 1996, I attended at the registrar's office, 20 kilometres away, in Brampton. Contrary to the registrar's optimism that the matter could be resolved then and there because the arrears in question were so minor, a court date was set for June 13, 1996.

While I was at the registrar's office, I tried to settle the case with the landlord's court agent, David Rubin. He dismissed my concerns and tried to intimidate me into moving out. He told me that I was not handcuffed to the building and I could move any time I wanted. He arrogantly refused to understand that if there was an alterna-

tive that I could afford, I would have been out of his client's roach- and mice-infested building months before. It did not matter to him that the extra \$65 per month was coming out of the money I needed for food for myself and my son.

I also began a difficult search for legal representation. I believed, like many tenants, that the Landlord and Tenant Act provided relief to tenants in dire straits. I also believed that I had the right to have a lawyer to put the legal arguments to the judge. At the last minute, I was able to get a community legal clinic to take my case. By the way, that was South Etobicoke Community Legal Services.

Owing a grand total of \$260, we marched into court. Judge Belleghem spent two hours listening to both sides of the case. Although he was obviously sympathetic to my situation, he stated that the existing legislation gave him no alternative other than to evict me. He did exercise some human compassion and gave me until August 31 to find alternative affordable housing for myself and my 11-year-old son, as long as I kept paying the rent at \$725 per month.

What is the landlord doing with all the new money that he is getting from these rent increases? He spent a lot of it to build a new suite for the superintendent so that he could rent the super's old suite out to a paying tenant. He finally did something about the lack of hot water. That's about the only thing that he did, something that, by the way, Mr Goldlist's people had told me I had to get used to because the building was so old. Mr Goldlist apparently, it's my understanding from what I heard on the first day of hearings, actually cares about tenants. Meanwhile the mice and roaches multiply and the plaster keeps falling off the walls in the hallways and apartments.

After almost two months of looking for something I could afford, I finally rented a one-bedroom apartment just yesterday. I encountered discrimination in many forms while on this quest: for being on public assistance, for having a low income, for being a parent, for being a woman. My child and I came very close to ending up on the street or in a shelter as a result of this system of tenant protection that's in place at present. Speaking of shelters, my Conservative MPP, Carl DeFaria of Mississauga East, suggested that my son and I could go to one if we got evicted. This was the only brilliant and helpful suggestion he could come up with in response to my housing dilemma.

I have read the discussion paper and have tried to imagine how things would have been if the minister's proposals were the law. First, my eviction probably would have happened faster. Maybe this would have been very good news for Ibrans Investment, but it would have been a disaster for me and my son. Probably we would have ended up in a shelter or a seedy motel where they send families that the shelter has no room for, especially nowadays, because of the avalanche of evictions due to the 21.6% cut in assistance. This is a preposterous solution for a government that wants to cut expenditures. Would the people who hear eviction cases in the minister's new plan have time to listen to my situation or would they just judge me according to their political

biases? Where is the proposal for helping tenants in difficult circumstances to keep their homes?

Would the minister's plan offer any relief from the problem of unexpected rent increases to the legal maximum? Not that I can see. The maximum rent would stay in effect until I move out. With rents rising all around because controls were ending on vacant units, the landlord would be able to get to the maximum even faster.

How would these proposals help me when I am out looking for a new place? Many rents would be higher, since there would be no controls on available units. There would be fewer units around because the minister decided to allow demolition and conversions of existing apartments. Even if developers started to build, would they rent their new apartments to someone with a monthly income of \$957? From what I understand, I could not afford these units even if I gave them 100% of my income.

In summary, the existing system is not working for me and thousands of low-income tenants. The rent control system is too generous to landlords. The courts are all too ready to evict people for amounts of money that most people would not bother to sue for in Small Claims Court. Landlords spend maintenance money on things that are of no benefit to their tenants just to increase their profits. Landlords have no respect for human rights legislation, and politicians scapegoat tenants who are unfortunate enough to be caught in the welfare system. Nothing proposed in the discussion paper would be of any assistance to tenants, but it is low-income tenants who would be hit the hardest.

When the Minister of Housing says that the Mike Harris government knows there is trouble in the Ontario rental housing market, what he really means is that there is unrest in the landlords' camp. Landlords are impatiently waiting for the Tories to make them even wealthier and they will reciprocate by doing their part at election time. Enter tenant protection legislation. Talk about adding insult to injury. I guess even a government that has displayed such disregard for people's basic needs could not be so blatant as to call the report the landlords' protection legislation, because that is exactly what it is.

As for Mr Leach's recent comment that he would rather do what's right even if it means losing votes, I don't believe he knows what the right thing is, or if he does, he is ignoring it. But he's right on the money about losing votes. He may have committed political suicide, along with a number of his colleagues. I hope the members of the committee won't join him in his suicide mission.

Last but not least — I shouldn't even remind anyone of this but it seems to have been forgotten in the scope of basic needs — I'd just like to say that housing is a right, not a privilege.

1630

Mrs Ross: Thank you very much for coming forward. I just want to stress to you that this is a discussion paper. We're very interested in listening to what you have to say to us.

It's obvious that you've said you don't think the protection act as it is now, rent control, is not working properly, that you've got problems with it.

Ms Panzuto: Obviously, from what I've just illustrated, yes.

Mrs Ross: What would you do to change it, to make it better?

Ms Panzuto: To change it? As I said, obviously it is not working, especially for low-income people. Why would you take that away from tenants? Were you to stick to the proposed changes put forth in the discussion paper, it would be a disaster for tenants.

Mrs Ross: Let me ask you specifically one question. A lot of tenants have come forward and said the guidelines that are in place with maximum rents are important and significant and they need to keep them in place. You're coming forward and saying no, you don't think that's appropriate. Can you tell me why you think that? Some groups are saying it should be kept in place to protect them and you're saying that it doesn't protect you. Maybe you can explain the difference.

Ms Panzuto: When did I say they did not protect me?

Mrs Ross: You mentioned that because the maximum rent could go up, your rent went up, so you didn't feel it was significant that it was there. You felt it shouldn't be there, that he shouldn't be allowed to go to a maximum.

Ms Panzuto: As a matter of fact, this particular landlord did not raise it to the max. For a building that's mouse-infested and roach-infested it's actually ludicrous that the maximum rent for my present unit is \$907.18. So he did not raise it.

What he was able to do because of the present legislation, though, and practically destroying my life while doing so, was to raise it — because the maximum rent was in place and he's still looking like Santa Claus, in other words, by saying, "Well, I'm not really raising it to the \$907.18."

Mrs Ross: He could. Right.

Ms Panzuto: In actual fact this man has done nothing in terms of repairs or what have you. The only thing he has given us is hot water.

Mrs Ross: You've been listening to the discussion. Have you heard a lot of people come forward and say they thought that dispute resolution, sitting down and discussing some of the issues with a mediator, might help a lot? You said you've gone to court, it's taken two hours and didn't help your situation. Do you think that a mediator might help in some instances rather than going to court?

Ms Panzuto: Are you referring to the tribunals that are being proposed?

Mrs Ross: Some sort of mediation system. I don't know what it would be. I'm just wondering what you thought of that idea, if it would be beneficial.

Ms Panzuto: As I said in my presentation, I think that there will be lots of political biases and lots of loops to jump through because of that. Were something like that to be instituted — a lot more work and planning and input from tenants which I don't feel this government is planning to do. My understanding is that it's planning to basically stack it with its own people and not really having —

The Chair: Thank you. Mr Sergio.

Mr Sergio: Ms Panzuto, thanks for coming down and telling the committee your happy-ending adventure. The

minister also said on Monday, when he introduced his proposed legislation, that no change means no choice. He's also proposing to amalgamate — although some of them are disappearing completely with rent control as we know it today — six statutes into one.

Knowing what you know and what you went through, is rolling those six statutes into one going to make the system more streamlined or more cumbersome?

Ms Panzuto: I think it would be more cumbersome.

Mr Sergio: People not only in your situation, but especially people who cannot help themselves the way you did through your process, what's going to be their situation? Where are they going to go?

Ms Panzuto: Perhaps some of them might put up tents at Queen's Park. But definitely lots of people are going to end up on the streets. There are no two ways about it. That's going to happen.

Mr Sergio: A large part of the renters are seniors. If situations such as this were to happen to seniors, what would it mean to seniors? Chaos?

Ms Panzuto: It would mean chaos. It would mean unnecessary hardship. It would mean that seniors will have no choice. There will not even be a choice in whether they're going to eat or they're going to pay the rent.

Mr Sergio: Of course the situation, Ms Panzuto, is that we don't have enough affordable apartments. Also the government and the minister, Mr Leach, are contemplating selling off the stock we have in place now, some 84,000 units. He did say that as units become available, they're going to refurbish them and sell them to private investors. Do you believe that the government has a role, a responsibility —

Mr Tilson: Where's the market?

Mr Sergio: At market value, yes. Do you believe that the government should get into the housing business and provide affordable housing or that they should get out completely, as they did in cutting funding for non-profits and so forth?

Ms Panzuto: The government of Ontario has to fulfil its mandate to all citizens of Ontario, not only to the privileged few, the rich ones. As I said before, housing is a right, not a privilege. As such the government does have a key role to play, and yes, it does have business in housing.

To give you an example, I have been on co-op lists for a number of years, one of them, as a matter of fact, for six years. It certainly has not helped me any to find housing, because that was taken care of by the Ontario government as soon as they came into power. So yes, they should get back into the business of housing.

Mr Marchese: Ms Ross says this is a discussion paper. In fact, most of them have said this is a discussion paper. I urge people who are listening and yourself — this is an indication of where the government is going and would like to go, would like to have gone further to help landlords even more, but I think they're too afraid to go further than that.

If it were a discussion paper, they would have introduced questions that people would respond to as opposed to saying, "We're going to decontrol the system."

The Chair: They're in the paper.

Mr Marchese: Oh, really.

Interjections.

Mr Marchese: "We're only going to decontrol the system. What do you think?" That's the discussion paper.

Ms Panzuto: "We're going to do it anyway, so tell us about whether you like it or not."

Mr Marchese: Yes. This is not a discussion paper. What they're doing is getting a sense from the public whether or not they're going to fight back against the elimination of rent control. If they are, they're going to back off, but if the public is going to fall asleep at the wheel, they're going to say: "This is fine. We can go ahead with these half-measures." That's what they're doing.

What you've raised is important because this government, by cutting welfare support, has created a crisis not just for people like you but for landlords as well, because they've created rent arrears; they've created tenants who can't pay their rent, and then you have a whole lot of people being evicted. We don't know, of those 4,000 people who have been evicted, whether this is the major reason, but we suspect that's a big reason why they've done that. They're creating a housing crisis by doing what they've done. Do you think you're one of the few that's in this situation?

Ms Panzuto: Oh, no, definitely not. We know that and the government knows that. Of course you know that. The government of Ontario has created lots of hardship for lots of people. When you attack the basic right of food and shelter, all I can say is, "Shame."

The Chair: Thank you. We appreciate your attendance here this afternoon and your interest in our process.

1640

SIMCOE COUNTY LANDLORD ASSOCIATION

The Chair: Our next presenter represents the Simcoe County Landlord Association: Patti Richardson. Welcome to our committee.

Ms Patti Richardson: Thank you very much. I did not bring a printout of what I want to say today. I do have a written response that I am going to send to Mr Leach as per his invitation.

I want to start out to say that, as you noted, I am representing the Simcoe County Landlord Association, which is made up of several thousand small-unit landlords in the Simcoe county area.

Being a small-unit landlord myself, I can only speak for myself on behalf of the landlords in our area as small-unit landlords, not as major corporations represented by multiple units in the greater Toronto or larger metropolitan areas.

The introduction of this tenant protection legislation has drawn many and mixed feelings from the small-unit landlords in Simcoe county. A lot of them are bewildered by the existing rent controls and landlord and tenant legislation and are increasingly bewildered by the new proposals. They're not sure if this is good for them or bad for them. What they want to know is, how can this legislation create a more fair situation between landlords and tenants?

More than 55% of tenants live in small-unit buildings of 10 units and under in the province of Ontario. When

you get to buildings that are four units and smaller, that percentage is 40%. I would suggest to this panel that the effects of this legislation are going to affect equally landlords and tenants in these smaller units.

The fairness that these landlords talk about is, what is good for the landlord should also be good for the tenant. When these landlords make investments in these properties, it is not for the big-profit bottom line, as the speaker just before me thought that her landlord was after. These landlords are community-involved people like you and I. They invest in their community, they take pride in their ownership and their investments. They in fact are probably friends most of the time with the majority of their tenants. They want to provide affordable and good-quality housing. They want to create for themselves an investment that will become their retirement and/or their legacy for their children. They are not out there to have their properties deteriorate from a maintenance perspective, so as to whittle away at their investments. They want to provide good housing.

The fairness aspect comes into place with respect to the fines and the penalties imposed on landlords. If you impose a \$10,000 penalty on a major corporation which owns thousands of units within their portfolio, inasmuch as I would expect that would hurt them, I don't think that would bankrupt them.

But you take a landlord who owns a single-family home or a duplex or a fourplex who is trying to provide not only for themselves and their family, but for other families who live within their units. If for some reason a \$10,000 fine is levied against them, they virtually are bankrupt. Now the bank, another major corporation, is going to own their building and they will have to take a look at this property like the major corporations look at the multiple high-rises. "This is the profit point. How can I get my money back out of this building?" They'll look very seriously at how they can enforce their rights through this legislation.

Most of the landlords in Simcoe County are saying: "Let's make it fair. If you are going to impose fines for a landlord who may create a deficiency in his property, then perhaps through determining how that deficiency occurred. If at the same time we find out that the tenant had caused this deficiency, there should be a fine levied against the tenant." That would make it fair. It may not be happier for the person who gets the fine, but it makes it fair.

In addition to that, with respect to the enforcing of the rights of landlords and tenants under the legislation, currently it is, for small-unit landlords, a bewilderment. They're not quite sure exactly what procedure they should take. Talking about one of the most minor infractions, being that of non-payment of rent, regardless of how that non-payment comes about, landlords are left to their own resources to try to represent themselves. When they finally make their representations through to the courthouse, they find on the day of the hearing that free representation is afforded to the tenants. That representative in our area is called Simcoe Legal Services and does not afford any representation to the landlord. Again, that is not fair.

If someone is in need of representation, they should be able to get it, if this government is going to put something in their budgets to do that, so it should be equally afforded to the tenants as well as to the landlords.

Once they get to that situation, they find that — again, I'll step back one part. A lot of the smaller communities in Simcoe county don't have a lot of the major, non-profit buildings in their communities so it is the position of the small-unit landlords to provide that affordable housing, so they are very much market driven. They cannot charge the full maximum rents and also expect to get tenants to rent in their buildings and be able to stay there without a high turnover.

When there is a situation, as the speaker before me suggested, that there is a major reduction in the amount of funding that some tenants are receiving through government assistance, it does put them in a position of: "Please, Mr Landlord, can you not increase my rent? Can you roll it back?" A lot of these small-unit landlords have done that.

When the situation becomes chronic and they end up in a court situation, where they have to obtain a judgement to terminate the tenancy, to get a judgement for arrears, the Landlord and Tenant Act, says, "Yes, you can get a judgement against a tenant who is in arrears," but under the Courts of Justice Act and the General Welfare Assistance Act, there is a further protection that says, "But if the tenant happens to be someone who is in receipt of this, they are technically judgement-proof and you can't enforce your judgement." That's not fair.

If all tenants are going to be treated fairly and if all landlords are going to be treated fairly, if you are going to get involved with dispute resolution, then everybody has to be treated the same. You have to be able to enforce your rights, to collect your rents and the tenants have to enforce their rights to be able to pay rents that are fair.

I think this committee should also look at all of the legislation that works in conjunction with this new legislation and make sure that if this legislation says you can do something, that the Courts of Justice Act or the General Welfare Assistance Act and any of the other acts that help to enforce this legislation also work together with that.

The other part that is afforded in the Landlord and Tenant Act is representation for smaller landlords by agents. I think we can all recognize that large corporations probably have major property management firms which are very well versed in all of the parts of the Landlord and Tenant Act. Or they have in-house counsel or very quick access to counsel so that they are represented quite readily. I think the speaker just before me said that aptly, that she was dealing with the agent representative for the landlord.

When you get into a court situation and you are going to be represented, the landlords who are trying to represent themselves feel very pressured that if they don't have someone to represent them, they are not going to know all the aspects, that they won't be treated fairly when they're there.

But when they finally get through all of the hoops and the circles and they figure out what they're supposed to

do, or they manage to hire an agent instead of a lawyer for the sake of cost, when they get there the courts won't recognize that an agent or a landlord representing themselves are worthy of any costs that they've incurred to get to that point. In fact, there is a recent decision set down that registrars can't deal with costs; it has to go in front of a judge. That means landlords just have to come back.

That's further reinforcement to say, "Let's make sure that the legislation also looks at the other acts that reflect against it." Landlords should have the ability to call on agents to represent them. That means that if they incur costs, they should be able to have those costs assessed fairly, as they would be if there was a solicitor.

1650

I can only stress that from a maintenance perspective, talking about the enforcements that are going to come under this new tenant legislation — again I am trying to bring everything out today with the look of fairness — the current situation under the Rent Control Act affords a tenant to contact someone from a rent control office to go out and take a look at the building. The rent control office at this current time doesn't make any effort to contact the landlord in the first place, doesn't make any effort to determine whether or not the landlord has had an opportunity or any conversation with the tenant with respect to completing any of the deficiencies. Yet a work order is issued. Well, this isn't so onerous at this time because through the number of years landlords have learned how to work with this legislation and try to come out creating a resolution solving the problem. At the end of the day, the tenant may move out but the landlord still owns the property and he still has to make those repairs.

It would be a shame if there isn't some further protection put in place there, as well, for the landlord. I think these kinds of maintenance deficiencies should be looked at fairly between both tenants and landlords. If you give the authority to the municipalities and their bylaw enforcement officers to look at that, it should be under the situation that both landlords and tenants can look at this together.

I don't have any statistics to give you but I can probably guess that most of you will agree that many times deficiencies in the units are also created by some of the tenants who live there, whether through negligence or whether through just bad maintenance procedures. So if a landlord is going to be accountable for the conditions of his building, I think the tenant should be equally accountable for how they take care of those buildings.

The biggest example that many landlords in our community give us is: "When I bought this building and I renovated it into a fourplex, it was all brand-new carpet, all brand-new drywall and painting and everything was nice." After five or six years, if he never rented the apartment out to anyone, it would probably look exactly the same, with a few cobwebs in the corner, but that wouldn't have satisfied his reasons for going through that effort, so he has to rent the property out. But if the landlord spends thousands of dollars on a yearly basis replacing carpet, replacing light fixtures and repainting apartments that is a result of negligence on the part of the tenant, I think that is not fair if there's not also some controls put in place that say everyone should be respon-

sible to each other. There should be some accountability on both sides.

I ask you, in closing, if you can consider those thousands of small-unit landlords throughout Ontario. Consider the fairness that is required for both parties to continue to get along harmoniously, as we believe most small-unit landlords do at this point in time, so that the landlords aren't oppressed by great fines that make them so nervous they maybe want to give up their investments, but the tenants know that there will be some accountability for their behaviour, both towards paying rent and for the ongoing maintenance and upkeep of the property.

In the future, if we can create a greater fairness between landlords and tenants, I think you will find more landlords who want to invest, who want to create more and better and affordable housing, and then that will lessen the burden on the government to have to provide provincial housing or non-profit housing, and therefore look towards more accommodating the individual, the person who needs that housing, into units as opposed to creating buildings.

Mr Curling: Thank you for your presentation. I think it's quite balanced and quite objective. Jan Schwartz was here earlier on and he represents most of those multiple small landlords, and he expressed some of the concerns that you talked about there too. I find your presentation extremely balanced.

Would you say that the real enemy in all of this would be the government — and I express it in this way. As the previous presenter stated, when they got 22% — some of the most vulnerable people — less in their income, she said over \$200 less income in order to purchase accommodation and food, and then has to turn around to landlords like yourself to plead, to say, "Could you reduce it because the big landlord has whacked me over the head with a 20%?" So you in turn come back and have to drop that. In other words, you have to suffer a reduction in your income. Would you say it started there, that really the cause of not paying rent is because of the lack of income and that's where the real problem is?

Ms Richardson: No, I wouldn't say that's where the problem is at all. I appreciate that this government had to address the costs in the welfare and the social assistance system, and I don't think that is causing the problems in the landlord and tenant world. I think, though, it has created a problem in that small-unit landlords have tried to accommodate tenants. They are trying to live in a market situation. I think the world of legal maximum rents — in as much as it's nice to look on a piece of paper and say, "Jeez, my unit's worth \$952.26," I can only collect \$595. In the world of market conditions, this is what is happening.

I was taking her example and bringing it forth that many landlords have been confronted with these kinds of requests. Many small-unit landlords in communities that don't have a lot of non-profit housing are providing affordable, low-income housing. They are not governed by all of the regulations that the non-profit buildings have, so they don't have all of the bells and whistles that go along with these beautiful buildings that have been constructed throughout Ontario, but they are still trying to provide affordable housing.

Mr Marchese: Ms Richardson, you appear to me like a good landlord. We've had a few good landlords coming in front of this committee, and they tell us how they maintain their buildings on a regular basis. It doesn't appear to me that you would allow a deficiency to be permitted for too long a time. You would correct a problem whenever there's one that arises; is that not the case?

Ms Richardson: That's usually the case, yes.

Mr Marchese: You'd probably admit there are a lot of landlords who let things go for quite a long time. That causes a problem for tenants as well. Would you say that's probably fair to say?

Ms Richardson: That's a fair statement.

Mr Marchese: If there is a violation and tenants are affected by that, where they have to live with those problems, how would you deal with it? What would you think is reasonable to deal with a serious violation?

Ms Richardson: I think, as I said, if it's dealt with fairly and it's found that the deficiency was created by the landlord, then through the dispute resolution process the answer and the order should be that whatever this deficiency is be corrected. At the same time, however, if it is found that the deficiency was created because of lack of attendance to that item by the tenant, I think the same consequence should happen.

Mr Marchese: I understand that part as well. But if the landlord is in breach, if the landlord is the person who's been avoiding the repairs, not wanting to do the repairs — it's going on and on; it's creating a lot of social and psychological problems for the tenants — is the fine not something that you would find reasonable in order to get them to do the job? Or do you think we should just go through the court system and however long it takes is fair and whenever it gets settled, it gets settled?

Ms Richardson: I find the amount of the fine that you're speaking of in this proposed legislation exorbitant in the eyes of a small-unit landlord. Their profits by the end of the year would not even be anywhere close to the fine they may get. I think that if the landlord looks at it and says, as an example, "Jeez, if I don't fix up this leak in the roof, I could face a fine of \$10,000," at the same time the tenant should know that, "Jeez, if I don't make sure I make the repairs and do the cleaning and do the things I should do, I'm going to be faced with that fine."

Mr Wettlaufer: Ms Richardson, I'd like to follow up something that Mr Marchese said, and that is that you appear to be a good landlord. Would you not say that this is indicative of most small landlords, that most of them are good?

Ms Richardson: I would say that's true. I think there's an element of small landlords who are confused by the legislation, and what may appear on the outside as someone who is trying to circumvent their obligations is simply someone who is trying to do everything they can to maintain both the property and the happiness of their tenants.

Mr Wettlaufer: One other question: The members of the opposition parties constantly refer to flipping properties. As you know, 80% of the buildings in Ontario which are rented out are small-unit buildings, lower than four units. You also made reference to the fact that 55%

of tenants live in buildings of 10 units or less and 40% of tenants live in buildings of four units or less. How many of the owners of these small buildings would you say flip properties?

Ms Richardson: I'm also a real estate broker and I can tell you, in the last six or seven years, virtually none. In the smaller communities, the market values of those properties just aren't there. Most small-unit landlords are in this for the long term. These are investments they want to be proud of. I drive by my properties in my small community of Penetanguishene and if the grass is growing out of the side of the building, I need it cut out because I'm proud of this, because I'm a community member. I'm involved in my community, and most of these small-unit landlords are. They don't buy these buildings just to let them fall apart and let rats and mice and rodents and everything else infest them, because how can you be proud of your investment if you do that?

They also can't sell them, so the only thing you can do is maintain them, make sure you have as much full occupancy as possible, and to do that you have to make sure that your tenants are happy and that they are comfortable and that you attend to them.

The Chair: Thank you very much, Ms Richardson. We appreciate your interest and your input into our process.

Mr Curling: Just before we recess, could I table some questions to the committee, and you want me to read this, Mr Chairman.

(1) Can the government table for the committee its plans to assist low-income tenants to afford rental housing?

(2) What is the estimated dollar amount allocated within the Ministry of Municipal Affairs and Housing's budget for shelter allowance? Will that amount be greater than the \$500 million that was cut last July from the shelter allowances paid to social assistance recipients?

(3) Can the government share with the committee its studies conducted that show exactly how much repair work is needed in Ontario's rental housing?

(4) Can the government tell us how high your projections show existing rents will have to increase to pay for the repairs?

I submit this to the committee, Mr Chairman.

The Chair: Thank you, Mr Curling. We'll now recess until 6.

The committee recessed from 1703 to 1802.

BLACK ACTION DEFENCE COMMITTEE

The Chair: Our first presenter this evening is Owen Leach from the Black Action Defence Committee. Good evening, sir. Welcome to our committee.

Mr Owen Leach: Mr Chair and members of the Legislature, a little background: The Black Action Defence Committee has been active in defending the interests of people of African origin and African descent against racism and other historical factors that affect our community. It also endeavours to advance and uplift our community in the attainment of its goals.

People of African heritage have been in Canada long before the dawn of its existence. Many have lived in various communities across this country for many

generations, yet it's often felt that we have "just arrived on the last boat." It is, however, true that our numbers in Ontario have increased considerably from the 1950s onward, most of whom came from the Caribbean and the continent of Africa. We now estimate 350,000 of the Ontario population.

It therefore follows that shelter, one of the requirements of a civilized life, would be of great concern to us, especially in a climate such as Toronto's, whose temperature might range from -30° to +30° Celsius. It means that adequate housing becomes critical in the life of everyone if we are to live comfortably, enjoy good health and, in extreme circumstances, preserve our life. Just ponder on the severity of climate that claimed the lives of three street people in Toronto this winter.

Government should recognize housing as a right for its people. It is not just a commodity we can take or leave. The government should aim to provide secure, adequate, affordable housing. New Directions does not. Instead, it introduces a policy of privatization and insidious rent decontrol which will create insecurity, high rents and wider disparities in the standard of housing. Think in terms of luxury housing at one end and increasing slums at the other.

The African Canadian community has a high tenant ratio. Consequently, any housing policy that impacts negatively on tenants in general will also disproportionately affect our community.

Vacancy control gives absolutely no protection to new tenants. It opens the door to rent gouging and discrimination of many kinds. In a racist society anti-black discrimination in housing will increase, as the landlord will be able to pick and choose whom he or she wants according to his or her prejudices. It would be easy for a racist landlord to make a rent prohibitive to a tenant he or she does not like or even to gouge the prospective tenant with extortionate rents. There would be no way of checking out the landlord, as the rent registry would be non-existent.

Furthermore, this has happened against the background of a recession. Many tenants are today paying 50%, in some cases 70%, of their cheques in rent; not only those on welfare, but also the working poor. New Directions doesn't give much hope to these people. New Directions leads us in a very wrong direction, because as it decontrols rent, it grants supply market control to developers and landlords.

We demand that the privatization be reversed, and we believe that it would be racist to enact the changes in New Directions as they will impact negatively on the African Canadian community. They also create the conditions where racial discrimination in housing can increase.

We also demand that rent control be retained.

The landlord must also not be allowed to demolish rental property without municipal control; otherwise the supply of housing could be drastically reduced. Thank you.

Mr Marchese: Thank you, Mr Leach, for your presentation. A few questions, one around the whole issue of harassment. They are proposing to create a strong anti-harassment unit, because landlords, knowing that if the

unit becomes vacant and they can increase the rent to whatever it is they think they can get, might harass people. Do you think that in the community you are aware of harassment is something that is still likely to go on in spite of the unit they would put into place, where the fines might be significant? Do you think that will have an effect on landlords with respect to harassment?

Mr Leach: Landlords are very powerful. They are in a situation very often where they can pit themselves against one tenant at a time, and invariably that tenant has a very difficult time. It takes a very strong tenant, a determined tenant, to really fight a landlord, and even when they do that they know they are jeopardizing their situation in housing. I saw it mentioned in relation also to rent increases. I don't know if you meant to implement it in regard to racial discrimination, but in any case, we see what happens in the Human Rights Commission, which has a big bureaucracy and lots of procedures, and yet lots of people are frustrated by these procedures that are set out. I can't imagine how such a thing would operate effectively. I guess a tenant will have to go through hell to bring a case against a landlord and win it.

1810

Mr Marchese: We've heard lots of cases as well around the Human Rights Commission — at least I've seen many constituents who have come complaining about the process, how long it takes, the unevenness of the whole situation and the treatment they get — but that's a whole other discussion.

A landlord can get now up to 5.8%, which includes 3% more if the landlord says, "These are the extraordinary capital repairs we need," so they potentially could get up to 5.8%. They're recommending that it be increased yet another percentage point, to 6.8%, including passing through on top of that any tax increases and hydro increases, which would bring it up to whatever level. In your experience, are people you know working, first of all, or getting any wages sufficient to cover for such costs?

Mr Leach: I don't know if landlords should be increasing any rents at all. I don't know why it's built into this whole thing because I know a lot of people who are working are paying 50% of what they're getting — and more — to rent. Wages aren't increasing; they're decreasing. There's a downward spiral of wages at this time. When you talk about increases and passing on costs not borne — I think they use that term —

Mr Curling: No longer borne.

Mr Marchese: That's another matter.

Mr Leach: These are ripoffs. Why are you making it more costly for a tenant and giving a handout to the landlord in the process? I am in the taxi business and I know that people haven't got money. The taxi business is down in the dumps because people hardly have any money to go anywhere, right? Having rent increases should be out of the question.

Mr Tilson: Thank you, sir, for coming to us tonight and expressing your concerns. I'd like to talk a little about maintenance. Many tenants are coming and saying the landlords have ripped off the system, that they have received adequate rent over the years. With regard to the fact that the statistics that are coming out are that 10% of

all rental stock needs substantial repair work, more than \$10 billion in repairs is needed to rental buildings across Ontario, many tenants are saying that the landlords have ripped off the system, that they have received all kinds of money and that this shouldn't be; in fact, where's the money? That's the question.

Then, on the other side of the coin, we're having landlord groups and statistics, at least in the Ministry of Housing, show that 80% of all rental buildings are made up of four or fewer units. In other words, they're not all high-rise, big-building-type landlords; they're small landlords. There may be some in your organization for all I know. I don't know about that; maybe you can help me with that. They say: "That's not true. We don't have all kinds of money. We're good landlords. We've done this, we've done that, but we still need money to repair our buildings."

I've got paper all over the place here, but there are stats, I seem to recall, that 70% of buildings are older than 20 years. Someone can correct me, but a large amount of the housing stock is old buildings and they're falling apart — concrete balconies and parking garages and all that sort of business. I understand many tenants don't have any money because salaries haven't gone up much. What can the province do? What can any government do, whether it be NDP, Liberal or Conservative, to solve this housing stock that's falling apart as we look at it?

Mr Leach: We went through a period of lots of speculation in this city with landlords making a lot of money, speculating and flipping properties. I've got to ask, where did that money go?

Mr Tilson: Yes, I know. That's one side of the coin. There are probably some people who did do some flipping, but not all landlords are bad. I defy anyone to say that because that's just not true. Nor are all tenants bad. We've got a problem. I guess the purpose of this — this isn't legislation; this is a paper — is that the government is genuinely looking for suggestions from the public, from organizations such as yours, to solve some of these very serious social problems.

I have another question for you, and again we're looking for advice, on the topic of harassment. Mr Marchese has referred to it as an enforcement unit, and you have indicated that the enforcement unit simply won't work. You have also indicated throughout your comments that there has been harassment; you have mentioned racial discrimination with respect to housing. My question to you is — and this is seeking advice. I mean, you want the province of Ontario not to have discrimination. As a representative of the Black Action Defence Committee, if the enforcement unit that's being suggested by this paper — and that's all it is — won't work, what will work?

Mr Leach: What I'm saying is that I want rent controls to remain and be strengthened.

Mr Tilson: I know that. I'm talking about discrimination and harassment.

Mr Leach: I notice you were discussing the matter of tribunals. I think you also need to bring some ordinary people in on these tribunals. It sounds like you're going for people way at the top for these tribunals, and I think

you need to bring grass-roots people on these tribunals who know what life at the grass roots is about.

Mr Curling: Thank you, Mr Leach, for your presentation. I think you brought about some light of things that have not really been thrown on the table, and I'm glad that you did so. Just a few minutes ago I was talking about that.

A couple of the things: It's almost like a deliberate attack on the most vulnerable in our society where this New Directions is going, taking away the rent registry, for instance, where you know where your rents are and all that and you can't be discriminated against. So those who are the most undesirable in our society according to some landlords — you know, the immigrants, the blacks, the disabled, the male student, all of those we don't want in our building — you can see that if there's no registry and there's no control, as they walk in, the price goes up. Then they would say, "Let's go to human rights." With that line that goes around the building four times, your case will be heard in about five years, but you want accommodation today.

So the first attack, I think, where this New Directions should go — "What can you do?" he asks. I'm sure you say put back the rent registry where we know what the rents are.

Mr Leach: Yes.

Mr Curling: They will start circling around, "What can we do?" Stop doing what they're doing, to begin with, and then that's what they can do. But you know, "I want your help," they say. "We want your help." They are saying this rent control, what you have in place, is not perfect. People like yourself have come in here and told them that. Of course we need it to be strengthened. Then it's, "What can we do?" "Strengthen it," they say, "Protect the tenants," in that line.

Recession has hit most of those vulnerable people you have there, sir. You have said it so well. The fact is, they are the ones now who will be faced with this new direction. This direction is going to give power to the landlords. The landlords have said, "I'm so happy that you're on our side." Because this is the same minister — who's not here, of course, but I'm sure he's listening right now and reading all our presentations — who says that rent control must go. He said that one place, and then another time he said, "We will protect tenants."

Do you have any confidence at all that your presentation will make an impact on this committee, that they will change through some of the points that you made? What can they do? Do you feel confident, leaving here, that they will listen, we all will listen and make those changes?

Mr Leach: I can tell you, I come here because I feel that I am not going to sit back and see everything destroyed, but when I hear Al Leach say that he's too concerned if he gets elected the next round, I understand that he doesn't care what happens; he's going to do what he wants to do. So as a citizen, I come here to make my position public.

In terms of the attitude of the government, I feel that it isn't listening. So I'm speaking to everybody who wants to hear. That's my view of it. The government

itself seems to me determined to do what it wants to do and pretend that it's listening when it isn't.

The Chair: Thank you, sir. We appreciate your input into our process and your being here with us tonight.

1820

CO-OPERATIVE HOUSING FEDERATION OF CANADA (ONTARIO REGION)

The Chair: Our next presenter is Bill Morris from the Co-operative Housing Federation of Canada. Good evening, gentlemen. Welcome to our committee. The floor is yours.

Mr Nick Sidor: Actually, I should probably begin by saying that I'm not Bill Morris. My name is Nick Sidor. I'm from Ottawa. I'm currently serving as the president of the Ontario council of the Co-operative Housing Federation of Canada. I want to add that this is a volunteer position. With me today is Dale Reagan, who is managing director of the Ontario region of the Co-operative Housing Federation of Canada. He is based here in Toronto.

The Co-operative Housing Federation of Canada (Ontario) represents more than 540 Ontario housing cooperatives, containing 115,000 people. As I'm sure you all know, housing co-ops are mixed-income communities that are owned in common and operated by their residents. Our Canadian cooperative housing movement has more than 25 years' experience in supplying affordable, cost-effective housing to low- and moderate-income Canadians.

I want to thank the committee for the opportunity to be here and to be heard tonight on this important initiative. I want to add that our perspective on this issue is an industry perspective. We are in the business of building and supplying affordable rental housing. Along with many others who are relying on evidence and sources of data and analysis to inform this committee, we believe that we are certain of four simple and basic truths. I'll make those four points and then perhaps say a couple of more words and then stop for questions.

First, as I'm sure you all know, affordable housing in Ontario is in short supply. All of us in this room agree that Ontario needs more rental housing. We should understand that both the supply of rental housing and its affordability have been worsened by policies pursued by the present government. These include thoughtlessly cancelling proven and effective non-profit and cooperative housing building programs and decreasing shelter allowances for nearly half a million Ontario renters. That was point one.

Point two: We also seem to agree that the plain and simple reason for the supply and affordability problems is that the for-profit sector is unable to build new rental housing because there's no profit in it. Our sector and most of the other parts of the housing industry have spent a long time looking at this and most of us have concluded that the plain and simple reason is that tenant incomes have not kept pace with the cost of building new rental units. Not only that; it's clear that the for-profit building market chases home ownership dollars, and there are obvious reasons for that as well. When the average

tenant income is \$35,000 and the average owner income is \$60,000 a year, the economics of that are pretty unmistakable if you're in the business of selling housing.

It's an even more telling statistic that one third of tenant incomes in 1993 — that's before the social assistance cut — were below \$20,000, so that tells you why the private market prefers to build for the ownership market.

It's important to recognize that there's no profit in it even with the long series of federal and provincial programs to help builders and developers, including tax and investment incentives: MURBs, ARP, CRSP, CORSP, ORCL, you name it. These programs stretch back to the middle 1970s and didn't solve affordability or supply problems.

It should be abundantly obvious to everyone that decontrolling rents will not help tenant incomes increase, nor could it possibly help to provide the dollars that are needed to overcome the huge and growing affordability gap that now exists. The costs of construction are simply too high. Our written brief, which you have, contains a summary of the evidence on this point, plenty of evidence from plenty of credible sources that the government appears to have ignored in developing its rent decontrol proposals. The fact of the matter is that housing is complicated and there are no simple solutions. That's point two.

Point three needs to be made as well, and that is that owning and operating existing rental stock in the for-profit sector is a business that already generates solid profits, as well as healthy capital appreciation when buildings are sold. The average annual rate of return in Ontario according to the Appraisal Institute of Canada is between 11% and 13%, depending on the type of building. That's the average annual rate of return over several years. Operating rental housing is a particularly solid economic proposition in the medium and longer term when the costs are amortized. In other words, in the private for-profit sector, the ones that operate in a businesslike manner are not suffering.

Point four is what rent decontrol will do, and we should all understand this: It will put windfall profits into the pockets of landlords who own Ontario's existing apartment buildings without any guarantee and without a shred of evidence that it will promote the development of a single new affordable housing unit.

If we are serious about encouraging new housing supply and making that new housing affordable, we need at least two policy instruments.

First, we need subsidies or loans that bridge the initial gap between the cost of construction and the ability of tenants to pay. I'd just point out that in the housing programs that were cut last year, those bridge subsidies were repayable. That's the first instrument.

The second policy instrument we need is income supports or shelter allowances for the one third of Ontario renters for whom market-based rents are out of reach. If these are administered by community-based non-profit housing providers, so much the better.

Last, we need a system of managing these policy instruments that does not rely on battalions of bureaucrats, the ones who are now in place in Ontario, nor the

shelves full of rules and regulations that all of Ontario's housing providers, including cooperatives, now face. I'm sure no one here would believe that government officials can better manage housing than the people who own it, be they members of cooperatives, community-based non-profit groups or even for-profit landlords. There is evidence that Ontario's approach to managing its cooperative and non-profit programs has caused social housing costs to skyrocket, with a good-sized chunk of those costs landing at the feet of taxpayers.

Our sector submitted detailed cost-saving proposals to the Ministry of Housing more than two years ago. We resubmitted them nearly a year ago to this government. We hope members of this committee have an opportunity to look at them, and we would be pleased to provide you with copies.

In conclusion, we urge the members of this committee to reject the proposed changes and advise the government to re-examine its policy direction and turn its attention to the affordability challenge that is the real problem facing Ontario's landlords and tenants. Thank you.

Mr Kells: I recall these figures — I think I recall them correctly — over the last couple of years, and I have had a number of debates with your Bill Morris on this subject. If I recall correctly — and as I said, I think I am correct — the average subsidy per co-op unit was over \$900 and the annual subsidy was just bordering on \$1 billion a year. That \$1 billion a year was based on 35-year mortgages. So the 115,000 people — and of course we're not talking units, we're talking people — are costing the taxpayers' purse \$1 billion annually. If we kept doing that, we would never resolve the tenant problem but we certainly would be well on the way to more than bankrupting Ontario. As long as that debate continued, we've never had a satisfactory answer.

Compare the 84,000 units that we have of Ontario Housing, and if I recall correctly, the annual cost deficit on that was in the \$300-million to \$400-million range. I always found it very difficult to compare what it cost us for our Ontario Housing units and what it was costing us for the co-op movement.

At the same time, your people always talked about this mythical crossover point where we started to make money or started to break even, and there never was any explanation about what happened with maintenance or indeed emergencies that would hit in maybe year 15 or year 20.

In all due respect to your movement — I understand the altruistic reasons and I have no quarrel with that — it just becomes hard for the public purse to pay this kind of money for the kind of units involved.

1830

Mr Sidor: If I take it that there was a question in there —

Mr Kells: Oh, yes, there was a question.

Mr Sidor: — I'd like to address a couple of things and then perhaps turn it over to Dale to help out.

First of all, that \$900 a month includes both the bridge subsidy that declines and is repayable and the rent-geared-to-income subsidy. So trying to project that out into the future as a cost that occurs every year is just plain wrong.

Mr Kells: Well, has it gone down yet?

Mr Sidor: For example, I live in a co-op that's nine years old, a federally sponsored co-op, and we get no more bridge subsidy of any kind. All we get are rent supplements for the households that live in there.

There is strong data from CMHC that suggest that cooperative housing is 17% lower to operate than non-profit housing and 71% more cost-effective than government-owned housing. I haven't directly compared between Ontario Housing and the co-ops in Ontario, but I can tell you that CMHC's evaluation said we were 71% more cost-effective on a per unit basis than government-owned housing.

Mr Dale Reagan: I don't want to move this into a debate about cooperative housing programs, so let me very quickly comment that the reason we're bringing the focus at all on the successful program solutions that were rejected is that clearly, as everyone I think recognizes, there has to be some way to address the need for affordable housing. We've demonstrated in our paper — and I think others will have demonstrated to you — that it's impossible in this marketplace for housing to be built without some kind of assistance. Our argument is that using a non-profit system with controls in place, and especially the type of system that we used under our programs where there is repayment, is the most efficient system for taxpayers.

Mr Sergio: Thank you very much for your presentation. I fully agree with the conclusions of your recommendations.

The present government has killed all the funding for co-op, non-profit, any type of assisted housing. The present government accuses the former government of killing rent control because of what they did during their last term in office. In the meantime, we have a four-year waiting list, many of those in dire straits for affordable accommodation. We have unemployment going up and income going down. We need, we've been told, about 6,000 affordable housing units per year to make some headway.

You have said three things: subsidies or loans, income support and a good system of management. We also had developers in here saying to us, "You have to eliminate rent control" — first step — "the GST and lower or eliminate taxes on rental units." I wonder — you as a business person in the business community — what else we have to do for developers to come up and build new affordable units. A double red carpet? What else do we have to give them?

Mr Sidor: I have mixed feelings about this, because in a sense the cooperative movement is developers. Of the money that goes into the cost of that housing, a large proportion of it is paid back by the residents in the cooperative. So we are also concerned with the high cost of housing and the high cost of constructing housing.

I've seen the developers' wish list. I guess my feeling is that those are subsidies from the taxpayers, plain and simple, just the way that affordable housing in other countries is funded through non-profit, community-based housing providers who get subsidies or through individual residents who get subsidies.

My list of things that would reduce the cost of housing in terms of its cost to build is not quite as long as the developers', but there are some measures that could be taken by the government, especially in the regulatory area, which would —

Mr Sergio: What would you recommend to us that we recommend to the government?

Mr Sidor: For one thing, it would be useful to streamline the regulatory process for getting approvals for housing. I am sure you've all heard that countless times. It's a nightmare out there not just for private for-profit developers but also for the non-profit sector.

I have observed that the Ministry of Housing is not always — I'm trying to be diplomatic and not political, but the Ministry of Housing is not always the most effective organization at assisting in the development process when it comes to the social housing programs and that drives up costs as well. So those are a couple of things.

Just to return to your first comment, we should all be clear that we are facing a housing crisis and an affordable housing crisis. Other countries have solved that in part by accepting the non-profit cooperative and non-profit community-based sector as an integral fair partner in the overall housing market. That's what we believe Canada should do and what Ontario should do.

Mr Marchese: Thank you, Mr Sidor and Mr Reagan. The problem we've got is that this government doesn't believe in cooperative housing. You've known that for quite some time and they've said that publicly. It's not as if they hide it.

The problem is that many people don't understand what cooperative housing is all about. I suspect many in this room probably don't know either and many outside of this room think that cooperative housing is just like MTHA. They see no difference. So we've got a problem. You have a problem in terms of making it clear what you stand for. I raise that because if we don't make that clear to the public about how to understand one form of housing from the other, it's a serious problem.

They argue that two things have destroyed the housing situation: one is rent control and the other is the competition of the co-ops and non-profit sector with the private landlord. Do you believe that's what has caused the housing crisis we've got now?

Mr Sidor: I actually heard that one in a couple of places where I've popped up to talk to folks, that the competition from Ontario's social housing programs was driving the private developers out of business.

Mr Marchese: Yes.

Mr Sidor: I think it's important to get a statistic on the table on this, and that is the statistic that public, non-profit and cooperative housing taken all together has never amounted to more than 7% of the housing market in Canada and in Ontario.

It's my belief, as a business person with another hat on, that a business person who can't compete with a business that has 7% market share is doing something drastically wrong and shouldn't be crying the blues about competition. At that kind of rate, if there was profit in building affordable rental housing, there would be builders building it. The fact of the matter is that there

aren't, there haven't been. Before rent control, there weren't. So I don't see how we can point the finger at rent control or the cooperative, non-profit sector as the engine that's killed private development of affordable housing.

Mr Marchese: Mr Kells obviously says and the other members say that it's a drain. Cooperative housing is a drain on the taxpayer — this other mythical taxpayer, talking about myths — but that's really what they argue. They say if we got rid of that and moved it to the private sector, everything would be all right. All we would have to do then is give shelter allowance. Now the problem is, we already give shelter allowance, \$2 billion worth, but they're saying, "We would continue with that, but we will let the private sector do it because it's cheaper." Do you think that is the solution to some of the housing problems we have?

Mr Sidor: The standard that most industrialized countries use for need of shelter and need of assistance is when a household is paying more than 30% of its income in shelter costs. So if a household is paying more than 30% of its need in shelter cost, presumably they need some kind of assistance. That's the standard that Canada has always tried to attain. That's the standard that other industrialized countries have tried to shoot for.

If in fact rent decontrol sends up the cost of rental housing, and we're still trying to get that 30% affordability standard, then what we're talking about are shelter allowances that will make the piddling amount spent on cooperative and non-profit housing in the past five years look like pocket change.

We should be all clear on that. If we're intending to have affordable housing for low- and moderate-income people in this province and not use programs that directly deliver new units like the ones that were cancelled last year, then we're talking costs that make those programs look like pocket money. That's our view.

The Chair: Thank you, gentlemen. We appreciate your input into our discussion.

1840

ANNE PARKER

The Chair: Our next presenter is Anne Parker. Good evening, Ms Parker, we welcome you to our committee. The floor is yours.

Ms Anne Parker: I apologize for not being down early enough to get copies of my brief made, but they will be made afterwards and distributed to people if they would like to read it afterwards.

Good evening. My name is Anne Parker and I am submitting a brief because I am a concerned citizen of this province. From the time that I first heard about the government's intentions to interfere with the rights and protections that tenants have with regard to their homes, I have been horrified to think that supposedly intelligent and responsible elected individuals would deliberately put their own fellow citizens at risk.

To clarify this, it is necessary to point out the simple facts of nature, that we are all biological beings and that we must have four basic things to sustain life: air, water, food and shelter. To take away any of these will result in

death. These facts are undisputable. We saw evidence of this last winter with people freezing to death on the streets of Toronto. The proposal of legislation making shelter more difficult to hold on to for some, and unattainable for others, is criminal and should be seen as the unacceptable act that it is.

At a time when economic uncertainty leads to continual cutbacks, downsizing and job loss and more and more people are finding themselves with less or no money for the necessities of life that have to come first, rent and food, this government is proposing to remove the protections and controls that have given assistance and security to tenants for many years.

Many people from all three political parties have worked over the past 25 years to create six pieces of tenant protection legislation because they recognized that a civilized society protects all its citizens. Why is their experience and wisdom being totally disregarded by this present government? Shouldn't we all be learning from our predecessors rather than ignoring them?

With regard to health concerns and crime, when hard times force all other businesses, as well as the retail housing market, to cut back their economic expectations, why is the rental housing market constantly expected to sustain annual increases despite the economic reality in which the tenants live?

If these proposed changes, which are anti-tenant and pro-landlord, come about, it will mean increased helplessness and hopelessness for many individuals in our society who are already stretched to their limits. The psychological distress this will cause will lead to increased health problems that will have more people turning to an already overburdened health care system. I presume the government would prefer to see this system being used less rather than more seeing as it's trying to cut costs.

Hopelessness temporarily alleviated by increased alcohol and drug consumption carries its own list of problems both for the individual, such as negative effects on mental and physical health, and for society as a whole, such as increased inefficiency and lost job time.

Despair, which is a natural result of the increased costs and increased concerns and problems, can be internalized by some leading to depression and withdrawal from society, but for others the frustration and anger will be externalized leading to increased violence and crime. Some of that will be necessary simply to survive. If a person can only manage to bring in enough money through odd jobs to cover the rent for a particular month, then theft is a logical alternative for acquiring the necessary food that they also need to exist.

With the government cutting a massive number of jobs and not creating new ones, what do they expect will happen to these unemployed people and how do they expect them to survive? If fair and legal opportunities are not available, what are people going to turn to? Isn't increased crime going to result in increased costs to the police force — another area where the government would like to see cutbacks in expenditures. You cannot destroy people's chances to have a better life and not expect your actions to have serious consequences.

With regard to the area of disposable income, for those individuals who have money left over after paying for the

necessities of rent and food, that disposable income is expected to go a very long way these days. Small businesses and corporations alike, as well as institutions such as hospitals and schools which are constantly asking for money to help with their situations, and charities, are all vying for a piece of that pie. The more money having to go for rent, the less there is available to distribute back into society among all these groups.

I have an example written out whereby if we have a building with one landlord and 10 tenants and at the moment each of those tenants has a spare \$10 to spend, if they'd like to go to a movie, they can purchase 10 tickets, the landlord can purchase one, and we have 11 movie tickets being purchased, keeping that particular industry going for a short period of time. If there is a \$10 rent increase, taking away the only spare \$10 that they have and that going into the pocket of the landlord, we have no tickets being purchased by 10 tenants and still only one being purchased by the landlord, resulting in a total of one ticket being purchased, not doing a great deal to keep that industry sustained.

Concentrating more money in the hands of fewer individuals does not redistribute the wealth and therefore does not create and sustain jobs. Therefore, it is in the best interests of all these different groups — small businesses, corporations, the different institutions and charities — to fight to retain rent control if they want to keep more disposable income in the hands of the tenants.

Personally, I've found in the 11-unit building that I'm living in that I have seen over the past 10 years the number of people being able to afford cars drop from 10 to two at the present time, which obviously adversely affects all automotive-related industries, which will not be getting income from these people — insurance, gasoline, Canadian Tire, repair shops etc. The significance, obviously, of disposable income is very important.

With regard to new buildings, it has been proposed that there is a need to build new rental buildings, presumably so that landlords can charge higher rents and make more money. The problem with that idea is that we are already at a maximum top end for rent for most people. The people who can afford that or a bit more are logically switching to buying rather than continuing to lose any more money. This is a very logical alternative. Why pay \$1,000 in rent when nowadays, for a little bit more than \$1,000 a month, you can own your own property? Why would the builders expect that people are going to gladly shell out \$1,500 in rent in their new buildings when they could own for that price?

In the 1970s, huge government subsidies gave landlords the incentive to build rental housing. Is the government proposing at this point in time, when it's supposedly cash-strapped, to also offer huge subsidies to developers and landlords to encourage building?

Surely if buildings were properly managed and appropriate funds channelled back into maintenance along the continuum of time rather than any extra money being considered profit and going simply into the pockets of the landlords, the affordable rental housing market picture would look quite different and quite a bit better at the present time. I think we need to have a lot more honesty being used in order to find out what the real state of

affairs is in this industry and why things are the way they are. To what extent has mismanagement and greed led to what we're seeing in the rental housing stock? If it is the fault of the greed of the landlords, then it certainly isn't the tenants who should be penalized.

If these two aspects — mismanagement and greed — have had a negative impact on the state of the rental housing market, then why is the government proposing to make it a lot easier for mismanagement, such as landlords letting their buildings run down to encourage tenants to leave, and greed — allowing unlimited rent increases on vacant units — to flourish? Their proposals are certainly advocating that these two things are a good idea and should be allowed to flourish, when in fact they are to a great extent part of the problem.

The government claim that tenants will have the protection of the anti-harassment unit is a hollow offering. They know that most tenants are unaware of what to do to fight back, are afraid to fight back or can't afford to fight back. To make sure that little or no help is available to tenants, the government has already cut funding to the very organizations designed to help the vulnerable with these concerns. It's destroying some and severely crippling others.

The idea of unchecked prejudices, which is a serious concern: If landlords are allowed to charge whatever they want for incoming people, any particular bias that a landlord has against any particular group, be it for race, sex, sexual orientation, whatever reason, it will be much easier for them to simply present an astronomical figure to these individuals, which they know they can't afford, to keep them out, making it look like simply that's the cost of the apartment that they want rather than it's because they deem these individuals undesirable. So racism and all the "isms" will certainly flourish.

1850

I thought we had been working hard to develop a code of human rights. Why is this now being ignored and why are we devolving? We live together, all of us as a society, which is a body of people who are interdependent on one another. If we don't work together, acknowledging that there must be basic human rights, with biological necessities coming first — because if we're not alive, the rest of the preferences or the rest of the luxuries coming afterwards aren't really of much use to us, so our biological necessities have to come first.

If we don't recognize that there is a need to have those for all the citizens, then parts of the body, the unit of society, will cease to function in a healthy manner and eventually, just as if part of our own individual bodies is — I don't want to use the word "infected," because that's putting a very negative stereotype on tenants, as if there is something wrong with them. They are simply disadvantaged for a lot of different reasons. If they need assistance, just as if we have an injured arm or an injured leg, if we tend to ignore it, it is eventually going to catch up to us and it will affect the workings of the whole body. So to think that there's a large part of our society, three and a half million plus tenants, and that we can disregard what is best for them is definitely going to affect everyone. If we don't work together, then we're

working against each other, and that is to the detriment of all of us.

The Chair: Thank you. We have a little under three minutes per caucus left for questions, beginning with the Liberals.

Mr Curling: I enjoyed your presentation. We've been listening here for a couple of days, and you have been consistent in what some of the other tenants have brought forward.

Let me read something from the minister's double-speak here. In his statement he said that a vacant apartment is locked into a rent which was being paid by a tenant who is no longer living there. The impression here is that the tenant is gone, who had signed a lease anyhow. This tenant had signed a lease, had paid rent and over the years had gotten their increase through the guidelines, and he said he wants to discontinue that. He wants to know that if a tenant is gone, a landlord has a right to raise those rents. One would get the impression that this is wrong and he's going to change that to give the landlord a better opportunity.

Is the apartment really locked in a rent after the tenant has gone or is it that there is rent control that has given increases over the years — the last time was 2.8% — and he has a right? Do you see that commonly outside here, that this apartment is locked in a rent that is paid by tenants? Do you see that?

Ms Parker: I think there's a greater picture where we're all locked into an economic reality that is affecting all of us. Times are tough; they're getting tougher. Money is getting shorter for everyone, and while ideally we would all like to think that unlimited resources and unlimited wealth would be nice for all of us, we're all affected by the situation. Tenants have limited resources, and even though a landlord would like to be able to raise rents astronomically, where does he assume the money is going to come from?

Most people who are working and who have jobs have had wage freezes, others have been cut back to part-time, others have lost their jobs altogether and there is not an unlimited resource for the tenant. So I'm not quite sure where the landlord thinks that unlimited money is going to come from. On the horizon, it doesn't look as though there's going to be a lot of jobs created, as if affluence is just around the corner and therefore we all want to get on the train and cash in on it as soon as we can.

Mr Marchese: Ms Parker, I really have enjoyed the commonsense expressions that you have stated here today. It's the kind of humanity that I think we need in society. It's the kind of humanity that red Tories used to bring to politics, but that soul has disappeared, unfortunately, from everything I see on the other side.

One of the arguments the Conservative members make in defence of the landlord, as opposed to the community interests, is that the rental stock is in bad shape and we're going to need approximately \$10 billion, we are told, to do the repairs. One of the members says, usually and frequently, "Tenants are saying the landlords are ripping off the system." Not everybody's saying that necessarily. They're saying some landlords, the bad ones, are not putting money back into the buildings. We've built into the rents a component that would permit repairs to

happen. In the 2.8% there's capital money that should be spent, and if there are additional repairs, there's an additional 3% they can apply for. Some of us argue that should be enough, and if they're using that, those buildings should be in good repair. My question to them as well is, what's happening? I think you had the same type of question that you were raising as well.

Ms Parker: I'm wondering at what point the buildings are paid off, because certainly they must reach a point when they are paid, just as with a homeowner's house. Usually after 25 years, the homeowner's house is paid off. Certainly if these are competent and capable and honest businessmen, then the large buildings would also be paid off, at which point all the income is then available for maintenance as well as profit. Also along the line, though, I'm sure there must have been money that was available that could have been put back into maintenance, if they didn't want to put it into their pockets.

All other businesses have to put the business first as they're going along rather than saying, "There's all this money coming in; I'm going to take as much as I want." Anyone can do that, but the business is going to suffer. I don't see why landlords don't expect that the rental units will be suffering if they are focusing on themselves.

Also, with the original government subsidies of massive amounts of money that were given to developers back in the 1970s, they only had a very small portion to pay, whereas when people are paying for their houses, they have to pay for the whole thing and manage to get it paid off in 25 years. If you're only paying for a quarter of your development costs, it certainly shouldn't be taking you that long to get your building paid off and to have money available for maintenance and upkeep.

Mr Maves: Thank you, Ms Parker, for your presentation. You started off fairly aggressively attacking our government and I'd like to start off with a little bit of a retort. You spoke of two things, a bad economy and the government protecting its citizens. I think our retort to that would simply be that a government protecting its citizens doesn't necessarily mean that we have to provide every aspect of life from cradle to grave. I think we have learned from our predecessors that trying to be all things to all people drives up taxes as well as debt. This destroys economies and causes the loss of jobs and the increased demand for yet more and more publicly provided services.

We've been in this downward spiral in Ontario for seven years now and as a duly elected government we're trying to reverse it. I think the July job stats of 30,000 new jobs in Ontario say that we might be on the right track. To us, we need to put in place an economic climate which is conducive to investment and therefore job creation, which will increase those incomes which you say are low and make it hard to afford rents.

Mr Marchese: Everything's okay.

Mr Maves: We have two different philosophies. We have a different philosophy from them, and I think it's only fair that I have an opportunity to enunciate ours.

One of the things you did mention was, and we have a continuing debate about this, landlord greed versus some landlords don't make enough to cover repairs and maintenance. You made an accusation that landlords had

been quite greedy and had been making all these increases over the years and asked what they had done with the money; they'd been banking it. I wonder how many landlords' books you've looked at and how many landlords you have discussed this with.

Ms Parker: Not a lot personally, though I do have enough intelligence and awareness from the length of time that I've been alive to be aware of human nature and what goes on. Actually, I do know people personally in the building trade who have been involved with landlords and have told me of the stories of what does go on: the penny pinching, the counting of the toilet rolls in the common areas. The landlords are the multimillionaires, yet they penny-pinch.

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This is not too much of a stretch of the imagination to realize that there is definitely going to be a percentage of individuals who do carry on like that. I guess a lot of other people are aware of that, which is why the protection legislation was brought in in the first place. Because unfortunately, I guess selfishness and greed is a fairly pervasive common human characteristic, and it's very easy for the powerful to survive. It's the more vulnerable who need help and who need protection, and they are a part of our society, unless you want —

Mr Maves: We've had several landlords —

The Chair: Thank you, Mr Maves. Thank you, Ms Parker, we appreciate your input into our process.

APPLECREEK CONSULTANTS LTD

The Chair: Our next presenter is Harold Sand, representing the Society of Rent Review Consultants. Good evening, Mr Sand; welcome to our committee. During your 20-minute presentation, any time you allow for questions would begin with the New Democrats. The floor is yours, sir.

Mr Harold Sand: First of all, I'd like to make one clarification. I am here tonight on behalf of my consulting firm, Applecreek Consultants, and not really on behalf of the Society of Rent Review Consultants of Southern Ontario. They are a board of which I am a member and I think in the matters that were asked of me I erroneously mentioned them as one of the references, but I'm not here to speak on their behalf. So I'd just like to make clear that I am here speaking on my own consulting firm's behalf, Applecreek Consultants.

One of the most serious problems facing us today in housing is the deteriorating condition of a substantial portion of our rental housing stock. Much of the rental housing stock in buildings of 20 units or more built between 1950 and 1975 is in need of major repair and upgrading so that they can provide modern living accommodation at current standards. According to reports previously completed, the cost of this work could be approaching \$10 billion.

Since 1975, when rent regulation was put in place, landlords have been reluctant to spend money on their buildings. Most landlords have only spent money in preserving structural integrity, and even then, have been unable to complete even necessary work because of the lack of funds needed to do the work. These buildings

could easily require between \$10,000 and \$20,000 per suite in repairs and upgrades, depending on the age of the building, quality of original structure and past capital programs.

A list of repairs would include, in the common areas, roof replacement, brick replacement, garage waterproofing and roof slat repairs, hallway carpet replacement, elevator overhauls, boiler replacement, hot water tank replacement, intercom replacement, drywalling of hallways, hallway light replacement, garage light replacement and installation of security monitoring systems.

Inside the units: new lighting in the kitchens and hallways, new toilets, new bathroom vanities, new closet doors and tracks, new windows and balcony doors — the current are single-glazed — caulking and proper sealing of windows and balcony doors, repair of plaster due to water penetration, replacement of kitchen cabinets, new fridges and new stoves.

Buildings with the lowest rents are probably buildings which were built before 1970 and have had little or none of the above work done to them since 1975, and thereby were unable to have an above-guideline rent increase approved. If even half of the above list of repairs and improvements are done to buildings built prior to 1970, you're looking at an expenditure of at least \$10,000 per suite. According to the tables attached to New Directions for discussion, there are approximately 800,000 rental dwellings that are more than 20 years old, and of these 800,000 approximately 700,000 would be in the private sector. The amount of money in needed repairs is \$10 billion, and dividing the \$10 billion by the 700,000 private rental units results in an average of \$15,000 per suite in necessary repairs.

The current legislation which provides for a 3% cap in above-guideline increases and the proposed cap of 4% would be a substantial impediment to having work done in the buildings most in need of repairs. It is probable that the buildings most in need of repairs are likely to be buildings that have not had any major renovations done during the last 15 years. They would also not have had any rent increases due to capital expenditures, and therefore, are likely in many instances to have lower rents than buildings that were renovated in the last 15 years. It's fairly safe to say that up until October 1990 most capital programs resulted in rent review orders granting rent increases. The current rent control regulations would grant a landlord a rent increase of approximately 10% to 12% of money spent on eligible capital. If one assumes an average rent per suite in the buildings most in need of capital expenditures to be \$600 per month or less, the 4% cap would represent \$24 per month, or \$288 increase per year. In order to justify \$288 in rent increases, a landlord needs to spend only \$2,300. The justified rent increase resulting from a \$20,000 expenditure would represent, over eight and a half years, a phase-in of 4% of the original base rent.

Since current rent regulations require landlords to spend the money and pay for the work before applying and rent increases only start to phase in the year following the first effective date of increase, a landlord would only start to receive enough rent to recover his or her costs after 10 years.

Since the landlord who has to borrow to do the above work has to start making payments from the date he pays for the work and not 10 years after completing it, it should be fairly obvious that the private lending industry would be unwilling to advance the funds needed to complete the repairs in a timely fashion.

Even if the lenders would advance funds as the increases started to take effect, secured by a building with such major deficiencies, landlords would have to come up with the funds for the first two years of the program, which is when rent increases start to cover the costs of borrowing the money for the following year's program.

If landlords undertake major renovations as rent increases provide the funding to pay for the work, the tenants will be forced to endure constant disruption of their enjoyment of their homes as these landlords will be forced to stretch capital programs over periods as long as 10 years.

Another problem that will face the landlords who cannot fund programs over a short period of time, such as one or two years, will be the provision in the act that permits tenants to suggest that some or all of the landlord's costs are due to neglect and the rent officers should therefore disallow them.

It's also possible that, as the time taken to do necessary repairs stretches out, tenants will be able to successfully apply for rent abatements or reductions for the landlord's failure to maintain his building up to the standards required. Lending institutions will be aware of the possibility that even after a landlord has been granted rent increases to cover the cost of borrowing funds, unless the repairs are completed and done quickly, tenants will be able to apply to reduce rents and would likely meet with some degree of success.

It's our opinion that a choice must be made in the drafting of the legislation between avoiding rent increases exceeding 4% above guideline and proper maintenance of a very substantial portion of our housing stock. It's our belief that there is great misconception about large numbers of 30% to 40% rent increases being granted for capital expenditures between 1980 and 1990.

During this time frame, I was one of the most active rent review consultants in southern Ontario. Although there was a large number of rent increases of 20% or more, these frequently contained many components other than capital. During most of that period, the guidelines were significantly higher. Landlords could get up to 5% for financial loss. Extraordinary costs in any category were permitted. As well, increases could be passed through for financing cost increases. During those 10 years, a landlord would have had to spend up to \$12,000 per suite to receive a rent increase for capital of about \$1,800 to \$2,000 per annum, and very few landlords did or we would not be facing the \$10 billion in necessary work.

It is total folly to expect landlords to complete the repairs required to bring buildings up to standards without either eliminating the 4% cap or raising it significantly so the capital programs can be completed in a reasonable time.

A simple example of how unworkable the current system is is the problem of having buildings meet the fire

code retrofit. This cost is generally under \$2,000 per suite. However, even though the buildings have had close to four years to have this work done, a very substantial number of buildings still do not have the work done for lack of funds or reluctance of landlords to go into debt to complete the work.

It's our opinion that the legislators face a clear choice between preventing rent increases greater than 4% above guideline for totally political motives, and thereby allowing a significant number of rental units to continue to provide ever-declining housing standards, or you can put forward amendments that will provide at least a 10% cap with unlimited phase-ins.

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The second choice will unfortunately cause some tenants to face unaffordable rent increases, but rents will still only rise to the market level. On the positive side, this will permit the preservation of most of our current housing stock, and the most positive aspect would be the creation of anywhere up to 50,000 man-years of work for at least the next four years, assuming that \$40,000 worth of repair or renovation will create one man-year of work, without the expenditure of any tax money whatsoever. Further spinoff benefits to the government would be the collection of over three quarters of a billion dollars in additional sales tax on the \$10 billion in renovations plus at least 50,000 workers finding gainful employment instead of unemployment.

The Chair: Thank you, sir. We've got about three minutes per caucus for questions, beginning with Mr Marchese.

Mr Marchese: Mr Sand, the present proposal says that they could charge up to 6.8% plus passing on hydro on top and taxes.

Mr Sand: Extraordinary increases in those costs.

Mr Marchese: Is it your sense that people in this depressed economy with wages very low and 1.2 million unemployed somehow could afford these costs?

Mr Sand: I'm not saying that every tenant who would face a rent increase could afford it, but they would be facing a choice of either having a rent increase or having no home at all because of the deterioration of the building.

Mr Marchese: Ms Parker, who just preceded you — I think you may have been here for her presentation — said very much what I said. In the past 20 years since the 1970s that you were talking about when buildings had been built, what have the developers and/or the landlords been doing with the money that —

Mr Sand: Trying to meet costs of hydro, taxes. Taxes per suite are over \$2,000.

Mr Marchese: My sense of the questions I've asked two landlords — in my question I've asked them, "How are you doing?" One of them was ticked off with the question.

Mr Sand: I would be too.

Mr Marchese: You would be too?

Mr Sand: I went bankrupt as a landlord.

Mr Marchese: He said the perception is that some people think you're making high profits, the landlords. I said: "Well, let's take 'high' out because I don't know what that means. Are you profitable?" He didn't like that

either. He said, "Yes, we're doing okay, more or less." I think if you're doing okay that somehow implies to me that there's money, and if there's money, there's money to pay the costs of hydro, taxes and all the other stuff and I think there's also money to do the repairs. My view is that some of the landlords haven't been putting the money back into the building. That's the problem.

Mr Sand: Sir, \$20,000 is not an amount that can be accumulated from any level of profit earned by any landlord over the past years. Those buildings deteriorate far faster than profits would ever have provided income to cover them.

Mr Marchese: You know what I would love is a study from a 20-year period of each building, if you'd open up the books, to see where the money has gone; how much they've gotten every year — it would be beautiful to see that — how much money went back into repairs, if any, if we could see that. If you have such a study, please give it to us. I really would like to see it. I'd like to be proven wrong. If you've got it, please send it to me.

Mr Sand: That would have to come from every landlord. Unfortunately, I haven't got the books of every landlord available to me.

Mr Kells: I don't want to appear to be agreeing with my colleague across there, but I find —

Mr Sergio: That would be a first.

Mr Kells: It will be a first. I find your numbers somewhat suspect and inflated in the sense that you used the tenant numbers and you divided it into the costs.

With all due respect, a lot of this all happened because of the Liberal legislation. I was on the Rent Review Hearings Board and I understand perfectly. What happened is there were a lot of sales that went on at the end of the 1980s. They bought them at the high, quite willing to use the legislation of the day to get that capital repair in there, indeed even if they had the loss. You appeared before those boards many times.

Mr Sand: Many times.

Mr Kells: The only thing that happened that ruined all this is that the NDP won the election of 1990 and they turned the tables. Unfortunately, many, many landlords got caught in that squeeze. The landlords that had a building for 25 or 30 years — this is where I somewhat agree with my colleague — maybe if they had put something more back in, you wouldn't be facing these extreme situations today, and I don't think they're as extreme as you say.

Now, I don't know what you're going to do, but you're not going to, in my honest opinion, get this government to do what you asked. If we believed, with all due respect, that litany and that money as you worked it all through, then I don't know who in the world could pay the money that you're talking in terms of repairing the buildings and I don't know why we should.

Mr Sand: Mr Kells, just to answer the question, first, I'm not saying every building is in the condition that would require —

Mr Kells: I used the big numbers.

Mr Sand: There are big numbers, Mr Kells. A large numbers of buildings that were built after 1970 are in reasonable shape. A large number of medium to smaller buildings that were built in the 1950s and 1960s are not,

and there is a substantial number of rental units contained in those buildings. We're not talking of the 250 —

Mr Kells: There was a lot of profit taken out of those buildings over that period of time.

Mr Sand: In many instances, sir, when they're resold, if you suggest that taking out a profit is against this government's policy, then you are suggesting that —

Mr Kells: Do not put words in my mouth. What I said was that —

Mr Curling: You've noticed it, Mr Kells. I like that.

Mr Marchese: I'd like to know what you said. Could you repeat that?

Mr Kells: I said that if you make a considerable profit over a long period of time, you've got to put some back in like I put some back in my house.

Mr Sand: Mr Kells, the new landlord is facing the repair bill.

Mr Kells: The new landlord.

Mr Sand: That's correct. The gentleman who bought the building.

Mr Kells: He knew about the building when he bought it.

The Chair: Mr Kells, excuse me. Mr Curling.

Mr Curling: It's not my time but I like what you're saying. Mr Sand, you've been around a long time.

Mr Sand: Yes, I have.

Mr Curling: You were around when the guidelines were being drafted. That guidelines take provision for any kind of inflation, any kind of cost increase in hydro, all that. The landlords were protected from that kind of cost. So when they want another cap now at 4% more, I want you to answer me, what did they do with that money? You said they were trying their best to keep up with costs. Isn't that 2.8% of the guideline which was given to keep up with costs?

Mr Sand: Mr Curling, as you well know, the guidelines vary, depending on which government is in place, as previous history, current history or future history. When the costs that landlords were suffering — the tables show the CPI index as being substantially higher than the guidelines — the guidelines were not keeping up. The guidelines were falling so far behind that landlords' actual dollar nets were diminishing annually at a time when inflation was rampant. In other words, the real profit was gone. There was no profit at all.

Mr Curling: Mr Sand, it is the landlords and tenants who created that guideline. They sat down together.

Mr Sand: Sir, that guideline came in after the landlords got killed.

Mr Curling: When the CPI came out it was calculated according to the guideline. The question you never answer is that when they were getting those, why did they not put something back into the building?

Mr Sand: Simply because the guideline only provided for cost covers.

Mr Curling: In the meantime it's your investment, and the guideline also made provision for a return on your investment. When a new landlord comes into play in the last two, three years or five years and says there is \$10 million worth of work to be done, what happened to the 10 and 15 years they were putting back in? You want it all in the five years and say, "We're not going to repair

it at all, but the money we had and we got, the other landlords, and the government was trying to protect that — I wonder what they got — went somewhere else." I think we want to know where that money went.

Mr Sand: Mr Curling, there are numerous landlords I represented who came before rent review tribunals with money spent — \$5,000 to \$10,000 — and today they need to do work again similar in quantity. There has been no provision in the current or past legislation that would have allowed that landlord to accumulate \$10,000. There was no provision for a reserve fund. It was taken out at the beginning of the rent review legislation. I was there when the discussion took place on the floor and there was a proposal to create a fund similar to a condominium structure, where a landlord was forced to or voluntarily could create a fund for reserves to put up roofs. That was deliberately eliminated from the legislation. A landlord could break even. The purpose of rent review was to allow landlords rent increases as they spent the money. Now you want to say, "Don't spend the money," or "You already have the money in your pocket." You can't have it both ways.

The Chair: Thank you very much, Mr Sand. We appreciate your input into our process and your attendance with us this evening.

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PARKDALE COMMUNITY LEGAL SERVICES

The Chair: Our next presenters represent the Parkdale Community Legal Services: Lilith Finkler and Ken Woroner.

Ms Lilith Finkler: I have to say if I'd realized it was quite so entertaining I would have come a lot earlier.

Mr Sergio: You can come back tomorrow.

Ms Finkler: I might do that.

I wish to begin this deputation by thanking the committee for the opportunity to speak before you here today. I'm Lilith Finkler, a community legal worker at Parkdale Community Legal Services. We are a community legal aid clinic funded by the Ontario legal aid plan and York University. We provide legal services to low-income members of the Parkdale community, which is located in the southwestern corner of the city of Toronto. We also play an active role in community organization, education and law reform. We represent hundreds of tenants each year, many of whom are residents of care home facilities.

I am a psychiatric survivor and a former tenant at a non-profit housing project. I have not lived in a boarding-home but I have spent the past four years advocating on behalf of and in conjunction with many tenants who do. I will speak on the proposals related to care homes as raised in New Directions. Ken Woroner, a staff lawyer at our office, will then speak with regard to some of the other issues.

Bill 120, which extends coverage of the LTA to care facilities and non-profit housing, was a positive legislative change. It provides psychiatric survivors in boarding-homes with the same procedural protections that other tenants have enjoyed for years. Many psychiatric survivors welcome this change. We believe that a tenant with a disability is a tenant.

We do not support the notion of so-called fast-track evictions. Persons with a psychiatric history are no more violent than any other group in society, therefore any attempt to institute such statutory provisions would have a differential negative impact on an already vulnerable and stigmatized group. The Criminal Code and the Mental Health Act contain provisions for dealing with situations where someone is a danger to themselves or someone else. We are not necessarily stating here that we support the use of the aforementioned provisions uncritically. None the less, such laws already exist and new ones need not be created.

We have serious concerns about the notion of voluntary bed checks. First, in boarding-homes tenants typically live two or three to a room. When the landlord checks on one tenant, they automatically interfere with the right to privacy of others in the room. Second, operators already monitor the personal lives of their tenants in extremely intrusive ways. For example, one tenant was sexually engaged when the operator conducted a bed check. The operator, whose religious beliefs did not include premarital sex, allegedly separated the couple and threw the woman out.

In addition, nightly bed checks present an opportunity for a predatory operator to sexually assault vulnerable women. Psychotropic and neuroleptic drugs administered in the evening often inhibit the tenant's cognitive and physical abilities. Most psychiatric survivors would experience difficulty protecting themselves in this situation.

While legislators may argue that these bed checks would be voluntary in nature, one must acknowledge that when there is such a tremendous power differential, the penalty for refusing may well be eviction. That is precisely why tenants with psychiatric histories require the same protections that other tenants enjoy. We are not special. We are oppressed. A system that values people with disabilities would accord us the same rights and privileges that non-disabled people already have.

It is inadvisable, in our view, to allow care operators to transfer residents to alternative facilities. Boarding-home operators transfer tenants to psychiatric facilities. The motivation for doing so may not be strictly out of concern for the tenant, however. The operator may be experiencing financial problems. In that situation, landlords might first ensure that they receive their rent. Then they send the tenants to the hospital so they can save money on food and utilities for the rest of the month. One operator, in anger at the welfare cuts last year, apparently sent her tenant to Queen Street to take his shower. She told him, "Let the government pay for the water."

According to your current document, an anti-harassment unit will be established to protect tenants from unscrupulous landlords. I would like to know how boarding-home tenants will be expected to contact such a unit. Most, but not all, boarding-homes provide a telephone for use by their tenants. Typically it is located in a public place, in listening range of staff and the operator. How can a tenant complain when the very subject of their concern is watching?

Furthermore, many people with psychiatric histories also have physical disabilities. There is very little accessible housing for wheelchair users, and these individuals

are often trapped in rooms, unable to leave the premises without assistance. One tenant, a wheelchair user with MS, for example, had angered the operator of her home by complaining to a visiting reporter about the physical condition of the building. The operator withheld food and drink from her for three days. An acquaintance of the woman in question came by and discovered what was going on. How are individuals such as this woman supposed to lodge a complaint with the anti-harassment unit? Are members of this unit prepared to inspect personally each boarding-home on a regular basis? How else can serious abuses be prevented?

It is necessary to place the lives of boarding-home tenants in a social context. The largest majority in Parkdale are survivors of the psychiatric system. They have been deinstitutionalized without the necessary supports, abandoned by the very system responsible for their care.

When we speak of laws, we refer to the paper it is written on rather than the people it affects. If laws are not enforceable and impact upon us only negatively, of what benefit are laws to us? The attitudes behind the laws must also change.

Instead of allocating funds to bureaucrats to rewrite legislation, give the money to survivors. Increase the amount of family benefits rather than devising creative ways to cut people off. Do not empty out the psychiatric hospitals in this province until sufficient housing is available in our communities. Do not abandon us to cockroach-infested, lice-ridden structures. Stop the forced drugging which chemically lobotomizes us and renders us incapable of fighting back. Build more affordable housing so that we have a choice in where we live.

Many of us do not want to be in shared accommodation. Workers who are paid to help us live alone or with family and friends. They live in independent, self-contained units. Why is housing for us so often shared accommodation? We want and need privacy too. Why are we expected to develop social skills in such an environment? If it's so therapeutic, why do workers not inhabit such accommodation themselves?

Take the money used to pay social workers who control our lives and use it to provide community economic development initiatives. This will allow us some financial independence. Our psychological wellbeing, like that of others, is tied to economic stability.

If those of you around the table truly wish to assist us in our journey, then do not withdraw one of the few legal protections we now enjoy. Bill 120 altered landlord and tenant legislation in significant and valuable ways. These changes should remain in effect. Thank you.

Mr Ken Woroner: My name is Ken Woroner. I'm a staff lawyer at Parkdale Community Legal Services. Parkdale Community Legal Services played an active role in the brief which was submitted to you by the Tenant Advocacy Group on Monday this week. We fully endorse that brief, as well as the brief presented by Legal Clinics' Housing Issues Committee and the brief to be presented by the Coalition to Save Tenants' Rights, an organization to which we belong. Rather than repeat the points made in those briefs, I propose instead to spend a few minutes on some selected topics.

First I thank the members of the committee for participating in this process. I would ask that when you consider the submissions being presented, you try as much as possible to set aside any preconceived notions and affiliations you may have, including your parties', so that your findings are guided by the content of the submissions.

New Directions refers to the need for laws governing landlord-and-tenant relationships to strike a balance. We would, of course, agree with the need for a system that treats tenants and landlords fairly. However, we believe it is very important to recognize that fair treatment of tenants and landlords cannot exist without recognition that in the vast majority of cases tenants and landlords do not come to their relationship as equals. Tenants have fewer resources than landlords, have language problems in many cases and have less access to information and representation. No law can possibly be fair if it does not recognize this fundamental reality.

When I try to understand the motivation behind the proposal to remove rent control from vacant units I can think of only two possible rationales. One is that by removing rent control, the government is enabling landlords to increase their incomes. Considering that landlords only constitute a small proportion of the population and are already doing relatively well for themselves, I can't imagine that this reason could possibly be the actual justification for the proposed change.

A second explanation, the one given by the government, is that the removal of rent controls will lead to the construction of affordable new housing. Yet I have heard builders and developers admit in the media and before this committee that these changes will not by themselves lead to new construction. They list a litany of obstacles that are responsible for the lack of new construction, with many issues being beyond the control or jurisdiction of this government.

At best, then, the notion of removing rent controls for the sake of encouraging new construction is a gamble. I submit that the government should not gamble with the lives of millions of tenants. These changes will surely result in widespread harassment, dislocation and increased rents. Builders are saying they cannot or will not build new units at existing rents. The only logical conclusion is that rents will rise. Why should tenants be the ones to pay for new buildings which will then be owned by landlords?

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I have heard much talk about the value of the market as a means to achieve appropriate rents and encourage new construction. However, I urge you to consider that market forces make no provision whatsoever for any human element. The concept of individual human beings and societal values is entirely foreign to the market. That is one of the reasons why we as a society have chosen to create governments in order to protect us from the potential dangers of the market. I would submit that as our elected government representatives, you have an obligation to protect tenants, many of whom are vulnerable members of society, from unregulated rents.

On Monday of this week, a Mr Goldlist of Goldlist Development Corp told a story about how an unnamed

politician had once told Mr Goldlist that tenants do not vote. I don't know whether there is any truth to that statement or not, but I predict that if vacancy decontrol is instituted, more of the 3.5 million tenants of this province will be voting in the next election than ever before.

In closing, the changes proposed in New Directions touch on numerous pieces of legislation and, if implemented, will have a very substantial impact on the lives of millions of people in Ontario. Bearing this in mind, my impression is — I believe you've heard this from other presenters as well — that New Directions and the related process are based on insufficient information, consultation and analysis. I would suggest, if the government is intent on making changes in this area, that at a minimum, introduction of legislation be delayed so that an independent body can be established in order to adequately examine all the potential impact of these or any other suggested changes.

This concludes my prepared statement, but there are one or two other points I'd like to make based on some of what I've heard before. One thing in particular is with regard to a question from Mr Maves to Anne Parker, who spoke two persons before me. You asked Ms Parker how many landlords' books she had checked. I guess the question was in respect to some kind of evidence that landlords are actually doing as well as some of the tenants who have appeared before you have indicated. As I heard that, I had an answer of my own, which I now have the opportunity to give, which is something that I think you've heard before. That is simply to quote the *Globe and Mail*, which says 10% over the past 10 years, which is better than any other sector, according to the *Globe and Mail*. So I think there is some evidence in terms of how landlords have been doing. I think that statistic also goes to a certain extent to the question of where money should come from in terms of repairs.

There's one other point I wanted to make, and that's in respect of something that was said by Mr Kells in his comments to the last speaker regarding maintenance problems often stemming from sales of properties in the late 1980s, and that there were inflated prices at that time. My comment with regard to that is simply, why should tenants be the ones to pay for bad deals that were made by landlords before the bust in the real estate market? That's all we have to say.

The Chair: We've got a couple of minutes per caucus for questions, beginning with the government.

Mr Maves: I'll let my colleague, who has the statistics on the 10% — the largest proportion of that 10% over the last 10 years was increased value between 1985 and 1990, the value of the properties. It wasn't an actual cash return, it was the increased property values, and that completely reversed itself in the 1990s. Mr Smith has the numbers. I don't know if he wants to give those.

Thank you both for your presentation. I was quite concerned about the beginning part of the conversation and the fear around the bed checks. I had never thought of it that way. The example that has always been given to us is that in some care homes there were people who had been quite ill and actually would want someone to check in on them. An example given was someone who

had had a serious heart attack, was seriously ill, and would want the people at the care home to check in on them. That's what they meant by the voluntary agreement to have bed checks, and I had never contemplated that other people wanted it for any different reason. Do you believe there is a place for this type of thing?

Ms Finkler: I think we have to understand that different people with different disabilities may have different experiences. The experiences that I'm describing are those individuals who live in boarding-homes who are primarily people with a psychiatric history, and unfortunately, their experience of bed checks is that it's a form of licensed abuse. I have to tell you that it's been excruciatingly difficult for me, because I've heard from many different individuals the same story over and over again, and when I attempt to advocate on behalf of these individuals, they tell me to stop because they're terrified of being evicted.

Mr Sergio: I believe the area that you come from, that you are speaking of on behalf of the Parkdale area there, is one of the areas, or perhaps the highest area, in need of assistance, and that is an area that has in the last year or so seen the closure and the elimination of assistance to a number of agencies as no other in Metropolitan Toronto, perhaps even Ontario. We have heard from many tenants' groups and individuals as well as to the particular needs of tenants, but none as great as we know in the Parkdale area.

You both have alluded to a number of living conditions of tenants in your area there, and how do people deal with particular problems within the existing system? As you have mentioned, it's very difficult. Contemplating the proposed legislation, would that make it harder for tenants and groups to deal with?

Ms Finkler: Yes. For example, one of the things I do as part of my work is go to visit the boarding-homes. When we get together, I try to go out for coffee, because of course those individuals who are mobile are really afraid to talk in the house. So I go out for a walk to one of the restaurants and I say, "Okay, what's your problem?" and they'll say, for example, "The landlord comes into my apartment," or into their room, or the staff do. According to the personal care bylaw, people are supposed to have a key to their own little locker place, and so what happens then is that the staff come in at night, take the key from around their neck, go to the locker, take the money from their family benefits cheque and then put the key around their neck. An individual can actually see the person stealing their money and yet do nothing about it because of a physical limitation and because of the fear of confrontation with the operator.

Mr Sergio: That's because of the lack of privacy —

The Chair: Thank you, Mr Sergio.

Mr Marchese: In the few moments that I've got I just want to thank you both for a number of things that both of you respectively have said and done: you, Ms Finkler, for your ongoing advocacy in the whole field of concerns around people with disabilities. You've done that when we were discussing the Advocacy Act and the Advocacy Commission, which we lost terribly. They have repealed everything that we have done. But your efforts obviously were not unnoticed by many of us, and you continue to

do this under this section which is titled "Rights of Operators."

Under that section you were raising concerns about how that affects the rights of people who are vulnerable and people with disabilities. I think your concerns have been shared by many people who have come to this committee, and I think members on the opposite side have heard it — I hope so.

Mr Woroner, you've raised two points that I just want to repeat, because I think they're important. Tenants and landlords do not come to their relationship as equals, some of us have said. Some of the landlords don't like the fact that we say that. It's almost as if we offend them when we say this. But it's true. Tenants do not come as equals to landlords, and you point out that they have less resources than landlords, have language problems, have less access to information and representation, and no law can possibly be fair if it does not recognize that reality. So it's important that you said that.

The other point is, "I urge you to consider that the market forces make no provision whatsoever for any human element," and that's a fact. It leaves in its trail a whole long list of tragedies and victims along the way. That's the market that they support, and it's important for people to remember that the market forgets victims.

Mr Woroner: I wanted to add one thing in terms of the question from Mr Sergio, which is, how do people deal with current problems? From my experience representing tenants, most people just put up with their problems, to be honest, in the Parkdale neighbourhood. That's usually because they have enough other problems and because they also, unfortunately, have very little faith in the ability of the current system to solve their problems.

I just want to add as a final remark that if the changes that are proposed are made, there will be all the less likelihood of people pursuing their rights, because they're going to be that much more afraid of having to move and suddenly being faced with vacancy decontrol, meaning uncontrolled rents.

The Chair: Thank you very much, Ms Finkler and Mr Woroner. We appreciate your involvement in our process and your input.

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EAST YORK TENANTS ALLIANCE

The Chair: Our next presenter is Mary Jo Donovan, representing the East York Tenants Alliance. Good evening and welcome to our committee.

Ms Mary Jo Donovan: Good evening. My name is Mary Jo Donovan. I am the chair of East York Tenants Alliance.

Before I proceed with our presentation, I would like to acknowledge a number of others who have appeared this week whose presentations we endorse and whose opinions we share. In no particular order of merit they include Metro Tenants Legal Services, which provides a unique and absolutely essential service to the tenant population of Metro and has provided this committee with a cogent and articulate response worthy of your careful consideration; Lorraine Katryan, who certainly gave you much

food for thought; United Tenants of Ontario; the Federation of Metro Tenants' Associations and the Tenant Advocacy Group, who all provided perceptive and informative briefs which should have persuaded even the most resistant right-wing hardliner; the Ontario Coalition of Senior Citizens' Organizations and others who have spoken so well on behalf of senior citizens, bringing their years of wisdom and insight to bear on this consultation; and Bob Levitt, whose oral presentation was lucid and enlightening and who has provided you with a written brief which is well worth a careful look. There were many others who certainly merit a mention here and with whom we heartily concur but it is not possible to name them all.

This is our response to the Conservative government's white paper, *A Proposal to Gut Rent Control and Tenant Rights and Decimate the Available Stock of Affordable Housing*. Perhaps you're surprised at the title used in this presentation. I know it's not the same as the title on the government proposal. I looked at the title and I said to myself, "This looks promising." Then I read the whole paper and I realized that something was very wrong. It occurred to me what must have happened. The very busy people in the Ministry of Housing must have been working on two papers at the same time and inadvertently mixed up the titles. I have undertaken to correct this oversight. Good old Janet and Ann and Carl and Scott and the others did not ask me to do this, but I'm a compassionate and generous person and I know what it's like to have a mistake remain in the record forever, so I've set the thing right and from now on we can all relax and call this paper what it really is.

So you want to gut rent control. Why don't you come right out and say so? If this is such a great idea, why are you trying to hide the facts behind a bunch of misleading verbiage? Why has John Parker stopped using the term "tenant protection" and is now calling it a rent review proposal? If this is such a great idea, why has Dave Johnson refused to meet with the 63% of his constituents who are tenants to explain to them just how great it is? Why did he sneak into his riding to hold a so-called town hall meeting in July, to which no tenants and very few others were invited, including many who supported and campaigned on his behalf in the last election? Is it possible that the reason for this is that he finds it difficult to face the tenants and stab them in the back at the same time?

At least John Parker had the courage to come to the East York Tenants Alliance rally on May 30 and face the people he claims to represent. There were about 300 tenants there of all political persuasions and they were unanimous in their rejection of this government's plans regarding tenant rights and rent control. Mr Parker appears to be a very pleasant and likeable person, but he had to stand there and take the flak for a Mike Harris initiative designed to reward a small special-interest group of landlords. It is worth noting here that the ones who yelled at him the loudest and were the most vehement in their denunciation were self-declared Conservatives.

The government members have hastened to assure a number of sceptical presenters that they have every

intention of reading and evaluating these briefs and giving careful consideration to the opinions and suggestions of those who have come here and others who have made written submissions only. But your response to date at these hearings does not support that contention. There have been many instances of this, but we will mention only a few.

Philip Turk of Gallery Specialty Hardware was here to discuss fire safety retrofits of apartment doors. He was concerned about the implications of a recent communiqué from the Ontario fire marshal. He was concerned that the retrofit requirements for a fire rating of 20 minutes could be undermined and that many tenants could be left with a door which had only a seven-minute fire rating. The government members ignored the fire safety aspects of this presentation and instead wanted to know how much this was going to cost the landlord. When told that the total cost, installed, was \$135, Mr Maves immediately launched into a calculation of how long it would take the landlord of a three-unit building to pay this off. Not only was it offensive to dwell on the cost of a door rather than the lives of the tenants which could possibly be in jeopardy, but Mr Maves also got his arithmetic wrong and arrived at an erroneous conclusion. These were his exact words, which I have recorded on videotape: "So if I had three apartment units at 500 bucks apiece with this 3% increase, that's 15 bucks a year, 45 bucks a year, it would take me about two and a half years to pay for that."

Of course, this is entirely incorrect. The correct figures are far different. A 3% increase on a rent of \$500 is \$15 per month and \$180 per year. For the three units, the total increase is \$540. This, however, is beside the point. Every guideline increase contains a bonus of 2% for the express purpose of covering the cost of minor capitals. The 2% that was collected the previous year is used to pay for the doors so the landlord already has the money in advance for this purpose, or at least a large portion of it. If he wants to bother, he can probably go to rent control and get the rest. In this instance, the doors would cost \$405 and the 2% would provide \$360 of that in advance of the purchase.

Another member remarked it would cost the landlord one month's rent on a unit to pay for the three doors. The fact is, it does not cost the landlord anything. It costs the tenants, who are obliged to pay the additional 2% increase year after year, even if the landlord does no minor capitals. The only time a landlord is obliged to account for the 2% is in the year that he makes an application for an increase above the guideline. Many landlords simply pocket the 2% and allow the building to deteriorate and then apply for an above-guideline increase based on capital expenditures which are in reality the costs of deferred maintenance.

In another instance, a government member challenged the benefit of a reserve fund, claiming that it would not be sufficient to replace a roof. I've used the same figures as in the case of the door above, and calculated that the 2% over 20 years would amount to \$7,200. I made inquiries regarding the costs of a new roof for a three-unit building, which is basically a two-storey house. Depending on how extensive the repair or replacement, it would cost a minimum of \$1,500 and a maximum of

\$3,500. This is less than half of the funds available if they have been used for nothing else in the meantime.

The point is that the landlord would have the money to do the work if he used it for the purpose for which it was collected. Bear in mind that this is only the 2% which he has collected from the tenants each year. If he would do as other businesses do and put a portion of his profit back into the building via a reserve fund, he would have ample money to maintain and upgrade his property. Instead he imposes an unfair financial burden on the tenants via an increase above the guideline.

The way the government members are tossing around facts and figures at these hearings is typical of the kind of inaccurate and misleading information that continues to be disseminated by government members in the media and through direct mail householders and newsletters. Following Peter Tabuns's presentation, a government member of this committee leapt at the opportunity to comment on the fact that Toronto was using taxpayers' money to pay for the campaign to keep rent control and save tenants' rights. But this government is spending far more of the same taxpayers' money to destroy those rights and gut rent control. In striking contrast to Andrade and FRPO, Real Star Management presented persuasive arguments for keeping the present system and demonstrated the benefits of the rent registry and legal maximum.

Andrade had the nerve to say that landlords don't repay their buildings because rent control has a negative impact on profits to the point of financial hardship, which makes maintenance and repair impossible. Andrade provided absolutely no proof of this.

We, on the other hand, have provided proof of the exact opposite in the attachment to this deputation, prepared by East York Tenants Alliance board member and ward 4 representative Shelley Davis, using documented information. Her submission shows clearly that despite an estimated profit of over \$1 million, this landlord had to be forced via property standards work orders to do the necessary repairs on his building.

Shelley has also prepared detailed comment on behalf of East York Tenants Alliance on the issue of the proposed repeal of the Rental Housing Protection Act. It is our position that vacancy decontrol and the loss of the Rental Housing Protection Act will effectively gut rent control and deprive us of most of the rights which we now have.

Mike Harris has made some reckless promises to the landlords. He is wedded to a badly flawed philosophy and he is determined to forge ahead and do exactly as he pleases, regardless of who gets hurt and how much damage is done to this province. You've been sent here to man the front line and endlessly repeat the assigned mantra, regardless of what you may think or believe privately. Harris is calling the shots and you have to fall in line or you're right out of luck. You may wish to consider this in the midst of your deliberations: In three and a half years, we will call the shots and Mike Harris will be gone and you will be gone with him unless you assert your own integrity and protect your own interests now.

This is supposed to be a discussion paper, but despite your assurances to the contrary, we are under no illusions

as to the effect of our participation here. We have been asked to come here and calmly discuss the impending disaster that will effectively destroy all the rights and security upon which we rely for our peace of mind and wellbeing. This is like being asked to enter into an in-depth, scientific discussion of the cause and consequence of tornados while watching one heading straight for your house.

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Most presenters have come here and thanked this committee for the opportunity to speak. While I value my right to be heard, I have no intention of thanking Mike Harris for imposing upon me this unwarranted hardship and spoiling what should have been a period of rest and recreation.

This whole thing is a crock and I personally resent it. I resent having my summer taken up with meetings and briefs and pointless discussions. Everyone involved has a right to resent it, including you people. We have all been obliged to participate in a farce so that Harris can play his political games and give to the landlords through the back door what he dare not give them through the front door. He has tried to stack the deck and protect the Metro members from a direct confrontation with their constituents, but I want to point out to you that even small-town and rural members have about 25% of tenant constituents and that is more than enough to determine the outcome of an election.

It did not escape my notice that as soon as the government members had access to Bob Levitt's comment on the composition of the committee, they quickly hustled Isabel Bassett into her place in order to try to undermine the point being made in his presentation.

In closing, and notwithstanding any previous comments, I would like to thank Mr Carroll, the Chair of this committee, for starting on time and keeping these hearings on schedule and for his very capable and good-humoured performance.

The Chair: Thank you very much for your comments and your presentation. That probably earns you an extra 10 minutes. We've got about three minutes per caucus for questions of Ms Donovan, beginning with the Liberals. Mr Curling.

Mr Curling: Thank you, Mr Chairman. He still owes me a minute, but it's okay. He said he gave it to me before. Yes, he has been conducting the proceedings very well.

I want to thank you for the presentation. It actually cut through all the grease and came right to the point and this is what we want to hear. We want to hear that people who come and make these presentations — I know that you also feel like many of us, that if this is a consultation, this is a discussion, you wonder, will the government listen or will this committee listen to some of the suggestions themselves?

Is there anything in your presentation that you feel this committee will listen to and change, or will anything that you say today make a difference so that they could put forward — they will, of course — they intend to gut rent control. Do you think that anything you said at all would have given it some hope?

Ms Donovan: Those of them who are politically astute will have paid attention.

Mr Curling: I am so happy that you have some hope, because we're here pushing very hard. That's some hope and I know we have some great compassion of my colleagues here. I have lived with them for almost a year now and some of them do have that kind of compassion. I want, of course, as you come forward and say directly that they understand that gutting rent control is somehow taken away, just complete that protection of those tenants.

As Mr Leach said in his speech, "We need to protect the tenant as long as the tenant lives in the apartment," and he goes on, "but when the tenant moves out and the apartment is vacant, it's vacant." So the consumer out there, coming back to any kind of apartment — no, hope that God helps them coming back into another apartment that is affordable. I fear that. I think there will be no apartment affordable for them to come back to. They'll be on the street and somehow the landlords, I think, wouldn't care because they want their profits. I just hope that we can appeal to the members here and I had hoped that some more Metro members are here. I know Ms Bassett came and Mr Kells came, they keep rotating in. Because in the urban area it concerns people very much how their apartment would be protected and the affordability will be protected.

Mr Marchese: We thank you, Ms Donovan, for coming and for making such a strong presentation. I know it's a strong concern of yours and all of the tenants you've been speaking to over the last month or two on this matter.

Mr Leach has come in front of this committee and said he's consulted tenants. In his presentation, he said that tenants are a priority of his and that's why he's introduced this package, which is called the tenant protection package. To your knowledge, has any tenant asked for an increase in rent which this proposal implies?

Ms Donovan: No, I haven't heard any tenants ask for any changes to this legislation. Unless you want to go back to Bill 4, I think you better leave it alone.

Mr Marchese: What I meant to say is that this proposal is going to mean that as soon as you move out, you're going to get an increase. I can't imagine any tenant saying to Mr Leach, "Please do that for me because I want to pay more."

Ms Donovan: No, I highly doubt it.

Mr Marchese: The other proposal in this is to move beyond the 2.8% guideline that we have at the moment and on top of that the 3% for extraordinary capital expenses. They want to add that to 4%. In addition, they also want to pass through hydro and taxes and in addition to that, costs no longer borne. It seems to me in terms of where you're living and the kind of tenants who are there, if this were to be applied, I'm not sure how any of the tenants that you know could cope with such increases. Is that a fair statement?

Ms Donovan: It's difficult enough to cope with the 3% above the guideline, which is already a landlord ripoff and a concession that was given to them in the last piece of legislation.

As I pointed out in my presentation, there's absolutely no reason why landlords should not reinvest some of the

profits into their business the same as everybody else does and not let it deteriorate and then expect somebody else to come along and pick up the tab.

Mr Marchese: Ms Donovan, keep up the fight. Dave Johnson, the minister, is going to listen to you.

Mrs Ross: Ms Donovan, thank you very much. I want to assure you that we are listening. It is a discussion paper. As a matter of fact, several of the recommendations from people and suggestions that have come forth have been discussed among ourselves and some of them we feel are — for example, the lady previous to you made some suggestions with respect to care homes that we didn't even think of, and I think she gave us something to think about there. So we are listening and we are hopeful that we're going to put forward something that will be a good piece of legislation.

I wanted to ask you, though, of the 3.5 million people who are tenants in Ontario, do you think all of them are needy people, low-income people?

Ms Donovan: The government has its own statistics which identify the tenant population incomes between \$20,000 and \$30,000. There are maybe 2% that are above that. The majority of tenants earn between \$20,000 and \$30,000, and if you really wanted to do the right thing as far as protecting tenants is concerned, you would have a blanket rent-geared-to-income policy.

Mrs Ross: I don't have any statistics on that. I have asked for them, so I'm interested in knowing that.

Ms Donovan: They're gathering dust somewhere in the ministry.

Mrs Ross: Well, I'll get them. Also, before I forget, I just wanted, in defence of Ms Bassett, she was subbed in and was here prior to that presenter you mentioned. So I just wanted to state that. But also do you think that —

Ms Donovan: I would like the government members to realize that I'm not blaming them for anything. You're not in the cabinet. You do what Mike Harris tells you to do, and that's that.

Mrs Ross: The other thing is that even though we're not from Toronto, I come from Hamilton and we do have tenants there as well, so I'm concerned about the issue.

We've had presentations from some landlords —

Ms Donovan: Can I ask you something? Are your concerns going to be listened to? You could be the most compassionate, empathetic person in the world, but Mike Harris is the one who's going to make the decision. That's the problem. Can you convince him?

Mrs Ross: I believe that our concerns will be listened to.

I wanted to ask you also, we've had presentations from some landlords, not all of whom are owners of huge developments, some who are small land owners and some very sincere, I must say. Would it be fair to say that there are good landlords as well as bad landlords —

Ms Donovan: Certainly.

Mrs Ross: — and the majority of them, I think, are good. Would you agree?

Ms Donovan: There are even some good Conservatives.

Mrs Ross: We agree with that too. Am I out of time?

The Chair: No, you're done, Ms Ross. Thank you very much, Ms Donovan. We've enjoyed your presenta-

tion and we appreciate your taking the time to come and give us your input. Have a good evening.

Ms Finkler: Since we're so conscious about accessibility, does anybody know how to fix a flat tire?

The Chair: Do we have a problem there? I wonder if maybe we could get somebody in security who might have a pump who could help.

Ms Finkler: I think it needs a whole new tire.

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LANCASTER/WINDSOR HOUSE TENANTS' ASSOCIATION

The Chair: Our next presenter represents Lancaster/Windsor House Tenants' Association, Rosemarie Herrell and Jim Loftus. Welcome to our committee.

Mr Jim Loftus: Good evening, members of the panel. Thank you for the opportunity provided to our tenants' association to present our tenants' concerns respecting the proposed tenant protection legislation.

As noted, I am Jim Loftus. I'm accompanied by Rosemarie Herrell. Rosemarie is the president of the Lancaster/Windsor House Tenants' Association, and I, in addition to acting as their agent in earlier rent control hearings, am president of the 7 Roanoke Road Tenants' Association in North York. I've had my own share of concerns about the Rent Control Act, 1992, and I have successfully represented my own tenants in the landlord and tenant disputes both at 361 University Avenue and 45 Sheppard Avenue East. By the way, members of the panel — never mind, I will tell you that later.

Just before we go into our presentation, I want to say that no doubt you'll have heard many times before tonight much of what we are about to present and you'll probably feel like the tired professor who's hearing that same old lousy essay for the 33rd time. But as with the repetitive TV commercials, ads and jingles, you, like our children, will begin to dig our message, sing out our song and perhaps even buy our products.

To begin with, if we were living in a perfect world, such as those envisioned in Plato's Republic or Thomas Moore's Utopia, we might be able to trust in the decisions reached by our legislators or, as in landlord and tenant relationships, that the landlords and tenants could negotiate on a level playing field. Unfortunately, sadly in fact, our world is far from perfect. We are devoid of trust in our legislators and the field is tilted almost vertically in the landlords' favour. Why? Well, as Plato, Moore, Marx and some of the other boys discovered in attempting to put their idealistic theories into practice, human nature being what it is such that the haves want more and the rich simply want to get richer. Having said that, please allow me to lead you through our presentation.

On behalf of the Lancaster/Windsor House Tenants' Association, representing over 100 units, we have taken an active part in educating tenants on their rights. We also encourage them to participate in any way they can to improve the enjoyment of their home. Through a survey we conducted, many issues have surfaced and we have experienced the soul-destroying frustration of going through rent control hearings. Yet despite the shortcomings of the Rent Control Act, 1992, this leaky

umbrella provides tenants with far more protection than is contemplated in the tenant protection legislation discussion paper.

This government is planning to end the present system of rent control. From our tenants' experience, we know there is much room for improvement. We know the act needs more teeth in it; it does not need replacement. The last thing we need is the abolition of rent control.

Strange how this Ontario government of Mike Harris made no mention of scrapping rent control during the 1995 election campaign or in the Common Sense Revolution document. Why?

The tenant protection legislation this government has introduced is no protection at all. How can it protect tenants when it eliminates the six laws that protect tenants: the Rent Control Act, the Residents' Rights Act, the Rental Housing Protection, the Landlord and Tenant Act, the land lease act and the vital services act. Without these laws, uncontrolled rent increases leave tenants and their families vulnerable and open to eviction. It contributes to anxiety and a feeling of insecurity. A level playing field it is not.

This proposal allows rent controls to be lifted so the landlord can charge a new tenant whatever rent he wants. We already have the situation in our complex where a tenant was intimidated and harassed when requesting maintenance service of the superintendent. When he and other tenants submitted written charges of harassment to the client service representative at Rent Control Programs, North York, they were frustrated and disheartened when told that charges of harassment are difficult to prove in court. Right on.

The tenant is now looking to move elsewhere. How many other tenants, especially seniors who are on their own or single parents on low incomes, would be trapped in this revolving-door effect? Leave one building only to enter another at a much higher rent because it is now decontrolled. Maybe I should have asked how many could afford to move, even if they were in an unpleasant situation, for example, lack of maintenance, elimination of services, harassment etc. The large majority of tenants in our complex are seniors on fixed incomes. They are already struggling with cutbacks, clawbacks and user fees imposed by this government and the federal government.

The current Rent Control Act has a generous rent guideline. Landlords can increase rents by 2.8%, plus they can apply for an extra 3% above this guideline. In fact, our landlords have already received an additional 3% increase for so-called extraordinary increases in taxes, hydro and water. An increase of 5.8% is far more than the increase in wages or pensions that tenants can expect. The government's proposal will raise this limit. Although all renters will suffer, seniors and others on fixed incomes will suffer particular hardship if controls are abolished.

While landlords are allowed to increase rents, the majority of renters are experiencing reduced incomes as a result of the previously mentioned cutbacks and the social contract legislation which has affected all people working in the public sector and many people in the private sector. Real losses for these people range from 5% to 10% or more. In addition, many of these people

have lost their jobs or are in danger of losing their jobs as a result of this government's job-cutting strategies.

Currently, local governments are able to limit the demolition or conversion of affordable rental housing to other uses, such as condominiums, because of the Rental Housing Protection Act. This new proposal will make it easier for developers to tear down rental buildings. Since we acknowledge that low-income rental units are at a premium, why would such a proposal be put forward? Tenants who cannot afford to move will also lose their accommodation if their buildings are converted to condominiums and they cannot afford to buy the unit. Quite simply, this will mean a community will lose a greater amount of affordable rental housing. It is absolutely certain that this government's proposal will do nothing but further reduce the stock of affordable rental housing.

With respect to maintenance, municipal governments, would that this proposal become law, will be given so-called new powers to prosecute landlords who do not do repairs on their buildings. Yet municipal governments already do not have enough resources to inspect buildings properly and to make sure maintenance and repairs are adequately done. Inspectors now lament that they lack both time and power to enforce minimum standards, which incidentally would be more appropriately termed "substandard" in the eyes of most tenants. We do not need the abolition of rent control to ensure that adequate maintenance and repairs will be performed. All we need is the full enforcement of the power now available. Simply put more teeth into the existing act. While on this point, why are landlords allowed to increase rents even if there are work orders for maintenance and repairs still outstanding? Where is the protection when municipal officers fail to prosecute negligent and irresponsible landlords?

In conclusion, it is clear that the proposals in the tenant protection legislation discussion paper will not be in the best interests of tenants because:

(a) With vacancy decontrol, the reality of the imbalance built into the tenant-landlord relationship is ignored for it is based on a false image of supposed equality between landlord and tenant. No equality exists now. It is ludicrous therefore to consider that a tenant might negotiate a fair and equitable rent when moving to another unit within the building or in another building elsewhere. With the scarcity of rental accommodation in the Metro area, the power balance weighs heavily in the landlord's favour. There is no negotiation here. The landlord says, "Take it or leave it." In the real world, negotiation of rent is a non-starter.

(b) By shifting the focus from the units to dealing with individual tenants in negotiations, one of the most fundamental and effective forms of tenant self-help, that of the tenant association, is eliminated. If protection is focused on the individual, tenants will see themselves as isolated and in competition for the better deal and an edge in dealing with the landlord. Rather than co-operate and see other tenants as neighbours and their building as a community working to achieve common ends, the government's changes will encourage the social deterioration of rental buildings, as with the deterioration of the entire social fabric of this province, I might add.

(c) There is a plan to discontinue the rent registry or a tracking system whereby new tenants can ascertain whether or not they are charged exorbitant rents and sitting tenants will have some degree of assurance that they will not be evicted or forced out in order to rent to a new tenant at a deregulated rent. As well, by dividing the building into those tenants who are paying a regulated rent and those paying a new, unregulated rent, this will pit tenant against tenant.

(d) Many of the changes proposed respecting property standards will not encourage landlords to do repairs and maintenance as required. The government realized this by basing many of its improved maintenance provisions on giving municipalities increased powers to enforce property standards bylaws. At the same time, the government is encouraging landlords not to do repairs by eliminating two of the most powerful incentives for landlords to maintain their rental property. Eliminating the orders prohibiting rent increases is actually a disincentive to maintain buildings by allowing landlords to obtain rent increases while ignoring municipal work orders.

Also, officers now have too much discretion about whether or not to charge owners for non-compliance. Tenants feel that if owners were in fact charged with non-compliance, they may be more willing to comply with the property standards. Tenants' current frustration results from the reluctance of officers not only to charge owners for non-compliance but even to issue violations in the first place. The proposed change does nothing to encourage or to ensure that officers will charge property owners who violate property standards.

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Furthermore, increasing the maximum fine will do nothing to encourage owners to maintain their building, because currently few charges are laid, and when there is a charge, owners are not being charged the maximum. Enforcement office statistics show there have been only 29 convictions under the Rent Control Act as of July 18, 1996. Fine amounts have been from \$500 to \$3,000 — very much below the possible maximum.

(e) The government's proposal states that an enforcement unit will be established to investigate tenant complaints of harassment, that fines for harassment will be increased and that rent reduction applications for harassment will be allowed. There is a section in the Landlord and Tenant Act which is similar to the proposed harassment section. Very few prosecutions have been initiated and even fewer have ended in convictions. The police, crown prosecutors and the courts generally do not take them seriously. The proposed enforcement unit will have to be adequately staffed and funded in order to give the proposed harassment provisions any teeth, which is unlikely, given the government's cost-cutting agenda, for example, reduction in legal aid services.

(f) There is no inherent connection between rent control legislation and the inability or reluctance of the development industry to provide adequate supply of rental housing. The goal of attaining increased rental housing supply from the private sector developers is a myth that is unsupported by concrete evidence. The British Columbia experience after the elimination of rent control was that of limited increase of housing, high rents and low

vacancy rates. BC tenants also experienced a diminution of their legal rights. Should Ontario tenants look forward to giving away their legal rights in return for maybe a few hundred new units? I think not.

Landlord groups agree that changes in this legislation alone are not enough incentive to build any new rental stock, and developers have said that to increase the rental stock not only will they require reforms to rent control, they will also require a reduction in federal, provincial and local property taxes and levies.

(g) Ultimately the goal of tenant protection legislation should be the protection of tenant rights. The government proposals fail miserably on all counts. The government would do well to inject an element of common sense into its housing agenda by jettisoning its proposals until it has plans that will in fact protect tenants fully.

However, let us close this brief hearing on a positive note. Tenants applaud those intelligent, reasonable and responsible landlords and developers who agree that in order to increase the stock of affordable rental accommodation, we must bring about a change in our taxation system. Property taxes on rental units should not be two, three or four times greater than that of a single family dwelling. Remove the tax and levy burdens and encourage landlords, developers and investors to build more affordable rental accommodation.

Even better, let's encourage the development of more rental housing, more jobs and economic growth by providing a tax holiday or moratorium for two, three or more years, just as we did in the mid-1940s and 1950s, to encourage major industries to move into Scarborough's Golden Mile, for example, or as our neighbours to the south do to entice many of our long-established industries and manufacturers to move to tax-free havens and thus encourage economic development in states or countries with little or no economic benefit to Ontario.

By the way, just before I close in this, let me leave you one more of good old Tommy More's ideas of equality under the law. He stated that we cannot have two laws — one for the rich and one for the poor, one for the powerful and one for the powerless, one for the haves and one for the have-nots. There can be only one law, that which protects all citizens equally. Thank you again for the opportunity to present our concerns.

The Chair: Thank you, sir. We've got about two minutes per caucus for questions, beginning with Mr Marchese.

Mr Marchese: Thank you both for coming and for your presentation; very cogent, I think, in terms of your interest in protecting tenants generally and some suggestions in terms of what they can do to build.

Your point about harassment is a very critical one. You are among many who said harassment is difficult to prove, and that's a fact. To make it appear that you've created an anti-harassment unit and all of the problems will disappear, that once you've instituted a proposal that says, "As soon as they move, you can rent at a higher rate," somehow harassment will disappear, it won't because, as you said, harassment is difficult to prove. I thank you for that point.

The other matter you've raised is the rent registry. It was designed to protect tenants. The elimination of that

doesn't offer protection any more to the tenant, and I think you're right in making that point.

In your conclusion, you say, "Remove the tax...burdens." "Property taxes on residential rental units should not be two, three or four times greater than that of a single-family dwelling." Do you think that in itself might be sufficient?

Mr Loftus: First of all, that tax levy is not borne by the landlord; it is actually borne by the tenant. But if they were lowered, for the comparable space in my unit, for example — I also have a summer cottage where the tax on that property, even though it's a large property, is about one quarter of that which I pay in actuality for my apartment. Four or five months of my rent go directly towards paying the taxes. If I were taxed on the same basis, that is, on a per-square-foot area, and based on a single property, not on a commercial basis, I think our rents could be lowered considerably. Maybe there would be some more room for better maintenance of the buildings, although I believe the landlord is adequately recompensed at the moment under the 2% for the cost of repairs.

Mr Tilson: I appreciate your comments about maintenance and whether there are any teeth in existing property standard bylaws, whether municipalities have the resources to enforce those bylaws.

The paper did refer to this topic. I don't know whether you had an opportunity to read them, but there are about half a dozen bullet points on page 4 and the top of page 5 of the paper putting forward a number of suggestions.

I come from a small riding, a rural-urban municipality, and they don't have the resources like perhaps some of the larger municipalities do for enforcement.

You may wish to comment, but one of the proposals is the municipalities' ability to recover costs with respect to court costs, for example, if they proceed or they do things. They may even repair at the landlord's expense. That in turn would be put on the tax roll.

Mr Loftus: Put on what?

Mr Tilson: That would be put on the taxes.

Mr Loftus: But who pays the tax bill in the end, sir?

Mr Tilson: The landlord.

Mr Loftus: No, the tenant does. That's passed on to the tenant directly. That's one of the major flaws in this entire legislation. Everything the landlord gets passed on to him, he immediately passes on to the tenant.

Mr Tilson: So then if that's inadequate — that's really what I'm getting at —

Mr Loftus: It's a major inadequacy. It's flawed tremendously.

Mr Tilson: My question is —

The Chair: Thank you, Mr Tilson.

Mr Tilson: I guess I don't get a chance to ask it.

Mr Curling: You're right, exactly, about who pays the piper afterwards. It's just back to the taxpayer.

Let me go back to the harassment fines — and I really enjoyed your presentation. Mr Leach said, "The cost to the landlord will be \$50,000 if he tries to harass this tenant." As you know, if \$50,000 is threatened for the landlord, he's going to get his lawyer, and the tenant, who hasn't much time really, the person who will be harassed, is the undesirable he wants out of his building.

Do you see a tenant really getting the kind of resources needed to fight this, like lawyers and the time off from work? Do you see this \$50,000 being effective?

Mr Loftus: No. I believe I presented some figures earlier. First of all, I doubt if a case would even come to court. Many tenants, I believe, would be afraid of going to court, because you've got to pay a price. It's a big jump to make, but I see it as a similar situation to a woman trying to accuse somebody of rape. She is made to look like she doesn't know what she's talking about and she really doesn't have a case. Therefore, they're afraid to go to court.

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Having written three or four pages on harassment, my own landlord's representative said, "Mr Loftus, we would have one hell of a time trying to prove harassment, even though you're dead right." I documented it very well, but he simply said, "You would not make a case of it in court." So this is going to hold no real value at all.

The Chair: Thank you, folks. We appreciate your input and your taking the time to come and be with us tonight.

Mr Loftus: Can I ask one question, sir? Are there people on the panel who are now residential rental tenants or have been in the last five years?

Interjection.

Mr Loftus: Then maybe you people will have some indication of where our real concerns are, since you're in the same boat.

CANADIAN MANUFACTURED HOUSING ASSOCIATION

The Chair: Our next presenter is Douglas Barker, past president of the Canadian Manufactured Housing Association. Welcome, sir.

Mr Douglas Barker: I'd like to thank the committee for allowing us to appear this evening and present our brief.

The Canadian Manufactured Housing Association represents the manufacturers of mobile and modular homes, together with the suppliers of goods and services to our industry. Our association also has representation from community owners and operators and home dealers.

Of the approximately 19 manufacturing members across Canada, six are located here in Ontario. Their manufacturing efforts represent a direct \$15-million-per-year influx to the Ontario economy, and the spinoff effect from that is about another \$30 million.

Units from our manufacturers are situated in over 125 mobile home parks or land-lease communities across the province and house 20,000 to 30,000 citizens.

The members of our association, together with our affiliate associations, have a significant capability to provide affordable housing for the citizens of Ontario, and I might add, without any subsidy. This ability is directly affected by the legislated planning and legal framework within which we do business.

Some members of this committee, others sitting in the Legislature and staff will recall that CMHA has previously been active in assisting and formulating legislation for mobile home parks and land-lease communities. We support now, as we did then, legislation that gives fair

and equitable treatment to both tenants and landlords. We applaud the intent to consolidate six existing pieces of legislation into one new act.

As the interest of our members relates to land-lease communities and mobile home parks, this presentation will speak specifically to matters affecting these communities. These communities may be older parks that have been in existence for a number of years and have modest facilities relating to services and amenities. Alternatively, the community may be a modern land-lease community specifically developed for that purpose. Normally, the latter are targeted to the retirement age group.

In either case there's a similar but very unique landlord-tenant relationship in that the tenant owns his housing unit but leases the site on which it is situated. This is substantially different, I suspect, than most of your presentations here tonight and throughout your hearings on the apartment situation where you're talking about the renter. We're talking here of a person who owns their unit and has it situated on a piece of land that is rented or leased.

I'd like to speak to some specific points that we would like to see in new legislation.

First is balanced landlord-tenant protection. Needless to say, the proposed legislation must provide a balance of landlord and tenant protection. This will result in well-operated and maintained communities and in tenants who will enhance their lifestyle while increasing their equity in their homes.

On the subject of fair market rent, the provision for a landlord to re-lease a site at fair market rent when the existing tenant moves is supported. However, we would like to extend that further. We feel that the new rent should be excluded from further rent control. Let the free market do its job. We understand this is now being done in British Columbia in relation to mobile home parks and I'm advised that it's working well.

It's felt that all units within a park should over the years reach a uniform market value rent. Continuing rent controls will continue a variation of rent levels within a park community, and that has the potential to create landlord-tenant problems and indeed problems of tenant to tenant.

The rent control guideline formula: The principle of continuing with the current rent control guideline for sitting tenants is acceptable. However, mobile home parks have two distinct abnormalities that must be addressed:

(1) Rent in mobile home parks is considerably less than in apartments. Applying the typical guideline increase creates a continual widening between these rents. We'd recommend that the guideline for mobile home parks be three times that of the apartment guideline.

(2) The majority of older mobile home parks, due to initial very low rents and 10 years of rent control, are in dire economic straits. Rents of \$100 to \$150 a month are unfeasible and need to be adjusted to ensure community survival and long-term health. We suggest the guideline address this situation by allowing annual rent increases to be the greater of guideline times three or \$50 per month.

Similarly, on capital expenditures, we are recommending that the formula be three times what is currently being recommended.

Required capital expenditures on infrastructure upgrades is one point that we're very pleased to see being considered in the new legislation. The discussion paper has recognized this need for a cost pass-through allowance for capital expenditures when a public agency requires infrastructure upgrades, ie, water and sewer. The paper questions what cap should be placed on this allowance.

These requirements are outside the landlord's control but will be defined by appropriate engineering studies and subsequent municipal and MOEE approvals. It is recommended that the actual costs involved, as attested to by the approval agency, which would normally be the Ministry of Environment, be amortized and charged on rent. Once paid, this cost would fall away from rent. Similar to the provisions of the Local Improvement Act, we think tenants should have the option of paying this expenditure as a lump sum and not be subject to rent increase.

The same procedure could apply in regard to capital expenditures that the tenants might want to do in their community. They might want to propose some upgrade. We would see that occurring in the same way: actual cost amortized through, and drop-off rent once that is paid for.

Rent reduction application: The right of a tenant to make an application for rent reduction due to inadequate maintenance, reduced or withdrawn services etc is recognized. We suggest that reduction should be based on the actual cost, not a perceived value.

Maintenance: It must be recognized in mobile home parks and land-lease communities that the landlord's maintenance obligations relate to the rental site and support infrastructure, not the residential unit which is owned by the tenant. Conversely, the tenant has the obligation to maintain their unit to appropriate standards. We would like to see legislation that allows the municipality to deal directly with the tenant in regard to property standards of the unit.

We support the position that the owner be notified in the event of a tenant-initiated inspection and vice versa, so that either the tenant or the owner can have the opportunity to fix it before it becomes a confrontational situation.

Sublets — assignment of lease: The discussion paper appears to recognize the landlord's right to charge market rent on subletting. We support that position, recognizing that the sublease must automatically be subject to all other obligations of the original lease. Similar provisions should apply to investor units with each change of tenant.

Abandoned property: This is a special problem which fortunately is very infrequent in mobile home parks, as the personal property is the unit and it is very seldom abandoned. However, the removal of an abandoned home from a site is expensive to the landlord and substantially reduces the value of the abandoned home. We suggest the new legislation be formulated to allow, after 60 days, the sale of the home, similar to a power of sale. From the money received, the landlord would be funded for shortfalls in rent and reasonable costs, creditors registered to the home paid and the balance held in trust for the tenant.

Dispute resolution: This is a complex issue. At this time we've not completed our position and we'd like to

come back to the committee with some further documentation on that. At this time we'd recommend that an agency should handle disputes in mediation. Perhaps that mediation could be done by an office such as the provincial facilitator, who now intervenes in some instances before Ontario Municipal Board hearings. We suggest that an application fee be required to reduce frivolous objections.

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For Sale signs were discussed in conjunction with Bill 21, and tenants and landlords can agree among themselves whether the sign should be in the window or on a public display board.

We'd like to introduce two new items.

Positive discrimination: Many modern land-lease communities are retirement oriented and function exclusively in that regard, and the people have invested in them specifically for that purpose. We would like to see the new legislation provide for positive discrimination in the form of zoning specifically for retirement communities. Recent decisions in British Columbia and the US have supported the principle of zoning related to age.

Finally, we'd like to suggest at some time down the road a land-lease communities act. Land-lease communities and mobile home parks, being unique and distinct from apartment and condominium units, can best be served by a distinct land-lease community act. This would be a preferred alternative to being part of legislation that principally relates to other unit types and tenures. We intend to work with the government on the new tenant protection act but are anxious to pursue a separate act specific to land-lease communities.

The Chair: Thank you, sir. We appreciate your presentation.

Mr Smith: Thank you for your presentation. It's certainly an area of interest for myself because I have two such sites in the riding that I represent with respect to land-lease communities.

You raise, on page 3, the issue of infrastructure upgrades. Has the association done any calculation as to its understanding of outstanding or potential infrastructure costs that would be related to communities across the province? Do you have any feel for what that dollar amount might be?

Mr Barker: No, I do not have a feel. I am, as a matter of interest, a practising engineer and this is my area of involvement. I would suggest it has a potential of being quite substantial. But I emphasize again that with the proper legislation I think that can be done by landlords and tenants without any government subsidies.

Mr Smith: On the issue of establishing a cap, and you raised that and identified it in your paper, albeit you've suggested that those costs flow through as the discussion paper suggests, have you given any thought to what an appropriate potential cap might be? Given my impression of what the outstanding costs for infrastructure development might be in these communities, I think we'd be looking at some fairly substantial dollars, as you've suggested.

Mr Barker: I don't think that's necessary. I look at some of our projects, and we can service from scratch a community, if we take a new community, for something

in the range of \$3,000 to \$4,000 a site for the provision of sewage and water facilities. If you take that and amortize it over 10 or 15 years or something it's not substantial. When you add them all together, yes. If you have a 100-unit community and you add it all together and it comes to \$300,000, yes, that's a lot of money. But if you're amortizing that over 100 units, it's not that substantial, and I think the citizens could well absorb that.

Mr Smith: The issue of positive discrimination and zoning related to age, could you elaborate your experience of what you've read into the US decisions and the British Columbia decisions on the matter, and where we've been and where we're going to with respect to zoning according to age?

Mr Barker: I'm not aware of anything currently in regard to zoning and age here in the province. Many retirement communities that now function do so strictly on their marketing to retirement and the types of units and amenities and facilities that are provided. They're oriented towards seniors and that does work, but at the same time I've had some of those seniors express a concern to me that they're investing in those units. They would like the proper zoning, age zoning, for them just to protect them.

Mr Sergio: Mr Barker, I see you have restricted your presentation solely to the mobile home park. I can appreciate that is your field, that's your business, but of course the government has a wider picture to look at. Your site of business is very minute compared to the requirements of providing rental accommodation for thousands of renters. Is it specifically leasing of these mobile homes? They are not sold?

Mr Barker: The units are purchased by the persons who will occupy them, so they own the unit. They have equity in the unit. They're situated in a park. The situation we're talking about is leased land. As it appreciates in value over the years they have the equity in that unit. They do not have equity in the land.

Mr Sergio: I understand. Having said that, do you think it would be appropriate or the right thing to do, given the situation in your own mobile home business and in providing affordable rental accommodation, for the government to make available some lots of land it owns for the provision of affordable rental accommodation and possibly mobile home parks?

Mr Barker: I think it would be very helpful if that could be done. That would help the situation.

Mr Sergio: If you were to deviate a little bit from your own interest as a mobile home operator and looked at the proposed legislation — we call it proposed legislation; some of us call it a draft proposal. It came to us with different names, both at the same time from the minister himself. One is called reform of tenant protection legislation; we have another one which the minister calls the tenant protection package, so even the minister himself or the ministry doesn't know what to call the same documents. The same documents are being called by two particular titles.

Do you think the government should take very serious, active participation in providing affordable housing of all types or should they leave it solely to the private industry?

Mr Barker: I think it should be left to the private sector.

Mr Sergio: Totally?

Mr Barker: Undoubtedly there will be a small number of people who, whatever the situation is, will need assistance on housing, and the government should be involved in that, but by far the vast majority of it should be left to the private sector.

The Chair: Thank you, Mr Barker. We appreciate your attendance and your input into our deliberations here tonight. We will adjourn until 9 o'clock tomorrow morning.

The committee adjourned at 2041.

STANDING COMMITTEE ON GENERAL GOVERNMENT

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Vice-Chair / Vice-Président: Mr Bart Maves (Niagara Falls PC)

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Mr Joseph N. Tascona (Simcoe Centre / -Centre PC)
Mr Len Wood (Cochrane North / -Nord ND)
Mr Terence H. Young (Halton Centre / -Centre PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Mr David Boushy (Sarnia PC) for Mr Stewart
Mr Alvin Curling (Scarborough North / -Nord L) for Mrs Pupatello
Mr Morley Kells (Etobicoke-Lakeshore PC) for Mr Hardeman
Mr Bruce Smith (Middlesex PC) for Mr Flaherty
Mr David Tilson (Dufferin-Peel PC) for Mr Tascona
Mr Wayne Wettlaufer (Kitchener PC) for Mr Young

Also taking part / Autres participants et participantes:

Mr Tony Silipo (Dovercourt ND)

Clerk / Greffière: Ms Tonia Grannum

Staff / Personnel: Mr Jerry Richmond, research officer, Legislative Research Service

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